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# 2004

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## Instructions for Forms 1099, 1098, 5498, and W-2G

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# General Instructions for Forms 1099, 1098, 5498, and W-2G

Section references are to the Internal Revenue Code.

## What's New for 2004

The following changes have been made to these general instructions:

1. Use of an account number is required if you have multiple accounts for a recipient for whom you are filing more than one information return of the same type (see page GEN-14).
2. Procedures for correcting paper returns have been modified (see page GEN-12). Instructions for correcting a payer TIN and/or name and address have been added on page GEN-5.
3. Electronic payee statements are permitted for all Forms 1099, 1098, and 5498 (see page GEN-11).
4. References to Forms 1099-MSA and 5498-MSA have been changed throughout these instructions to Forms 1099-SA and 5498-SA. See **Form 1099-SA** and **Form 5498-SA** below.



See the specific form instructions for more information on the changes listed below.

**Form 1098-E.** For loans made on or after September 1, 2004, origination fees and capitalized interest must be included in the amount reported in box 1.

**Form 1098-T.** The telephone number provided by the institution must be for the information contact at the institution not the institution's general telephone number.

**Form 1099-B.** Temporary Regulations sections 1.6045-3T and 1.6043-4T were reissued under Treasury Decision 9101. Any broker that holds stock for a client in a corporation that the broker knows or has reason to know had an acquisition of control or a substantial change in capital structure must file Form 1099-B, Proceeds From Broker and Barter Exchange Transactions, not **Form 1099-CAP**, Changes in Corporate Control and Capital Structure. The reporting is required by the broker if the shareholder is required to recognize gain (under section 367(a)) as a result of the transaction and is not an exempt recipient. Three additional boxes have been added to Form 1099-B to report these transactions. New boxes have been added relating to broker reporting under reissued regulations. A box for corporation information has been added below the box for the broker's TIN.

**Form 1099-CAP.** Temporary Regulations sections 1.6045-3T and 1.6043-4T were reissued under Treasury Decision 9101. The following changes have been made to Form 1099-CAP reporting:

- A corporation that is required to file **Form 8806**, Information Return for Acquisition of Control or Substantial Change in Capital Structure, under revised Temporary Regulations section 1.6043-4T, must file form 1099-CAP with the IRS and furnish a copy to each shareholder who receives cash, stock, or other property as a result of the acquisition of control or substantial change in capital structure (under section 367(a)) and who is not an exempt recipient. However, if the corporation can reasonably determine that the receipt of such stock would not cause the shareholder to recognize gain, the corporation is not required to report the fair market value of any stock provided to a shareholder.

- The list of exempt recipients has been expanded to include brokers.
- Brokers will not receive Forms 1099-CAP from a corporation and are not required to issue Form 1099-CAP. Instead, a broker who has reason to know, based on readily available information, that a transaction described in 1.6043-4T(c) or (d) has occurred, is required to file Form 1099-B. Accordingly, boxes that were used by brokers to report noncash transactions and backup withholding have been deleted.
- Special reporting rules apply to furnishing Forms 1099-CAP to clearing organizations.

All boxes relating to broker reporting have been removed based on the reissued regulations. The remaining boxes have been renumbered.

**Form 1099-DIV.** The boxes for post-May 5 capital gain distributions and qualified 5-year gain have been eliminated based on section 301 of the Jobs and Growth Tax Relief and Reconciliation Act of 2003.

The instructions have been revised to amend the holding period rules by changing the 120-day period to a 121-day period and the 180-day period to a 181-day period. The Commissioner of Internal Revenue has agreed to allow taxpayers to apply the new periods as if pending legislation were presently enacted.

**Form 1099-MISC.** Rules for reporting golden parachute payments have changed based on final regulations under section 280G.

Payments related to certain health arrangements are exempted by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 from the reporting requirements of section 6041 in box 6.

**Form 1099-R.** Distribution codes 1 and J have been revised to require the taxpayer to complete Forms 8606 and 5329. Codes 2, Q, and T have been revised to require that certain criteria be met in order to use these codes.

**Form 1099-S.** The escrow number related to the reported sale may be entered in the box below the transferor's name and address. The box is re-titled "Account or escrow number (optional)."

**Form 1099-SA and Form 5498-SA.** The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 created new Code section 223 that establishes health savings accounts (HSAs). Forms 1099-MSA and 5498-MSA have been replaced with Form 1099-SA, Distributions From an HSA, Archer MSA, or Medicare+Choice MSA, and Form 5498-SA, HSA, Archer MSA, or Medicare+Choice MSA Information. Any reference on Form 1099-SA or 5498-SA to a Medicare+Choice MSA includes a Medicare Advantage (MA) MSA.



At the time these instructions were released for print, 2004 Forms 1099-SA and 5498-SA had not been printed. However, do not use Forms 1099-MSA or 5498-MSA to report distributions or contributions made for 2004. The new forms and instructions will be available later in 2004.

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## Items You Should Note

### Photographs of Missing Children

The Internal Revenue Service is a proud partner with the National Center for Missing and Exploited Children. Photographs of missing children selected by the Center may appear in instructions on pages that would otherwise be blank. You can help bring these children home by looking at the photographs and calling **1-800-THE-LOST** (1-800-843-5678) if you recognize a child.

### Available Products

In addition to these general instructions, which contain general information concerning Forms 1099, 1098, 5498, and W-2G, we provide specific form instructions as separate products. Get the instructions you need for completing a specific form from the following list of separate instructions:

- **Instructions for Forms W-2G and 5754**
- **Instructions for Form 1098**
- **Instructions for Forms 1098-E and 1098-T**
- **Instructions for Forms 1099-A and 1099-C**
- **Instructions for Form 1099-B**
- **Instructions for Form 1099-CAP**
- **Instructions for Form 1099-DIV**
- **Instructions for Form 1099-G**
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- **Instructions for Forms 1099-R and 5498**
- **Instructions for Form 1099-S**
- **Instructions for Forms 1099-SA and 5498-SA**
- **Instructions for Form 5498-ESA**

If you prefer to have all the specific and general instructions in one booklet, the **2004 Instructions for Forms 1099, 1098, 5498, and W-2G** is also available. See **How To Get Forms and Publications** on page GEN-3.

### Reporting Backup Withholding on Forms 1099 and W-2G


If you backup withhold on a payment, you must file the appropriate Form 1099 or Form W-2G with the IRS and furnish a statement to the recipient to report the amount of the payment and the amount withheld. This applies even though the amount of the payment may be below the normal threshold for filing Form 1099 or Form W-2G. See **Backup Withholding** on page GEN-3.

### Form 945. Withholding Tax Return

Report backup withholding, voluntary withholding on certain government payments, and withholding from gambling winnings, pensions, annuities, IRAs, military retirement, and Indian gaming profits on **Form 945**, Annual Return of Withheld Federal Income Tax. Generally, file Form 945 for 2004 by January 31, 2005. For more information, including the deposit requirements for Form 945, see the separate **Instructions for Form 945** and **Circular E**, Employer's Tax Guide (Pub. 15).

Any income tax withholding reported on the following forms must not be reported on Form 945:

- **Form W-2**, Wage and Tax Statement, including withholding on distributions to plan participants from nonqualified plans, must be reported on **Form 941**, Employer's Quarterly Federal Tax Return.
- **Form 1042-S**, Foreign Person's U.S. Source Income Subject to Withholding, must be reported on **Form 1042**, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons.

 **Pub. 515**, *Withholding of Tax on Nonresident Aliens and Foreign Entities*, has more information on **Form 1042** reporting, partnership withholding on effectively connected income, and dispositions of U.S. real property interests by a foreign person.

## Use Form 1096 To Send Forms to the IRS

You must send Copies A of all paper Forms 1099, 1098, 5498, and W-2G to the IRS with **Form 1096**, Annual Summary and Transmittal of U.S. Information Returns. Instructions for completing Form 1096 are contained on Form 1096. Also see part **D** on page GEN-8.

### Substitute Statements to Recipients

If you are using a substitute form to furnish statements to recipients (generally Copy B), be sure your substitute statements comply with the rules in **Pub. 1179**, General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, W-2G, and 1042-S. Pub. 1179, which is revised annually, explains the requirements for format and content of substitute statements to recipients. If you are using a substitute form to furnish information to recipients, it must comply with the requirements in Pub. 1179.



*All substitute statements to recipients must contain the tax year, form number, and form name prominently displayed together in one area of the statement. For example, they could be shown in the upper right part of the statement.*

### Guide to Information Returns

See the chart on pages GEN-16 and GEN-17 for a brief summary of information return reporting rules.

### Taxpayer Identification Number (TIN) Matching

TIN Matching allows a payer or authorized agent who is required to file Forms 1099-B, DIV, INT, MISC, OID, and/or PATR, which report income subject to backup withholding, to match TIN and name combinations with IRS records before submitting the forms to the IRS. TIN Matching is one of the e-services products that is offered, and is accessible through the IRS website, [www.irs.gov/e-services](http://www.irs.gov/e-services). It is anticipated that payers who validate the TIN and name combinations before filing information returns will receive fewer backup withholding (CP2100) "B" notices and penalty notices. E-services technical support is available by calling 1-866-255-0654

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## Need Help?

### Information Reporting Customer Service Site

If you have questions about reporting on Forms 1096, 1098, 1099, 5498, W-2, W-2G, and W-3, you may call a toll-free number, **1-866-455-7438**. You may still use the original telephone number, **304-263-8700** (not toll free). For TTY/TDD equipment, call **304-267-3367** (not toll free). The call site can also be reached by email at [mccirp@irs.gov](mailto:mccirp@irs.gov). The hours of operation for the call site are Monday through Friday from 8:30 a.m. to 4:30 p.m., Eastern time.

**Other tax-related matters.** For other tax information related to business returns or accounts, call 1-800-829-4933.

If you have access to TTY/TDD equipment, call 1-800-829-4059 to ask tax account questions or to order forms and publications.

### Internal Revenue Bulletin

The Internal Revenue Bulletin (IRB), published weekly, contains newly issued regulations, notices, announcements, legislation, court decisions, and other items of general interest. You may find this publication useful to keep you up to date with current developments. See **How To Get Forms and Publications** on page GEN-3.

### Unresolved Tax Issues

If you have attempted to deal with an IRS problem unsuccessfully, you should contact the Taxpayer Advocate. The Taxpayer Advocate independently represents your interests and concerns within the IRS by protecting your rights and resolving problems that have not been fixed through normal channels.



While Taxpayer Advocates cannot change the tax law or make a technical decision, they can clear up problems that resulted from previous contacts and ensure that your case is given a complete and impartial review.

Your assigned personal advocate will listen to your point of view and will work with you to address your concerns. You can expect the advocate to provide:

- A "fresh look" at a new or on-going problem.
- Timely acknowledgement.
- The name and phone number of the individual assigned to your case.
- Updates on progress.
- Timeframes for action.
- Speedy resolution.
- Courteous service.

When contacting the Taxpayer Advocate, you should provide the following information:

- Your name, address, and employer identification number (EIN).
- The name and telephone number of an authorized contact person and the hours he or she can be reached.
- The type of tax return and year(s).
- A detailed description of the problem.
- Previous attempts to solve the problem and the office that had been contacted.
- A description of the hardship you are facing (if applicable).

You may contact a Taxpayer Advocate by calling a toll-free number, **1-877-777-4778**. Persons who have access to TTY/TDD equipment may call 1-800-829-4059 and ask for Taxpayer Advocate assistance. If you prefer, you may call, write, or fax the Taxpayer Advocate office in your area. See **Pub. 1546**, The Taxpayer Advocate Service of the IRS, for a list of addresses and fax numbers.

## How To Get Forms and Publications



*Because the IRS processes paper forms by machine (optical character recognition equipment), you cannot file with the IRS Form 1096 or Copy A of Forms 1098, 1099, or 5498 that you print from the IRS website or the CD-ROM.*

**Personal computer.** You can access the IRS website 24 hours a day, 7 days a week, at [www.irs.gov](http://www.irs.gov) to:

- Access commercial tax preparation and *e-file* services.
- Download forms, instructions, and publications.
- Order IRS products on-line.
- See answers to frequently asked tax questions.
- Search publications on-line by topic or keyword.
- Send us comments or request help by email.
- Sign up to receive local and national tax news by email.

You can also reach us using File Transfer Protocol at [ftp.irs.gov](ftp://irs.gov).

**CD-ROM.** Order **Pub. 1796**, IRS Federal Tax Products CD-ROM, and get:

- Current year forms, instructions, and publications.
- Prior year forms, instructions, and publications.
- Frequently requested tax forms that may be filled in electronically, printed out for submission, and saved for recordkeeping.
- The Internal Revenue Bulletin.

Buy the CD-ROM on the Internet at [www.irs.gov/cdorders](http://www.irs.gov/cdorders) from the National Technical Information Service (NTIS) for \$22 (no handling fee) or call **1-877-CDFORMS** (1-877-233-6767) toll free to buy the CD-ROM for \$22 (plus a \$5 handling fee).

**By phone and in person.** You can order forms and publications 24 hours a day, 7 days a week, by calling **1-800-TAX-FORM** (1-800-829-3676). You can also get most forms and publications at many IRS offices, post offices, and libraries.

## Backup Withholding

Interest, dividends, rents, royalties, commissions, nonemployee compensation, and certain other payments (including broker

and barter exchange transactions, reportable gross proceeds paid to attorneys, and certain payments made by fishing boat operators) may be subject to backup withholding at a 28% rate. To be subject to backup withholding, a payment must be a reportable interest or dividend payment under section 6049(a), 6042(a), or 6044 (if the patronage dividend is paid in money or qualified check), or an "other" reportable payment under section 6041, 6041A(a), 6043(c), 6045, 6050A, or 6050N. If the payment is one of these reportable payments, **backup withholding will apply if:**

1. The payee fails to furnish his or her taxpayer identification number (TIN) to you,
2. For interest, dividend, and broker and barter exchange accounts opened or instruments acquired after 1983, the payee fails to certify, under penalties of perjury, that the TIN provided is correct,
3. The IRS notifies you to impose backup withholding because the payee furnished an incorrect TIN ("B" notice),
4. For interest and dividend accounts or instruments, you are notified that the payee is subject to backup withholding (under section 3406(a)(1)(C), "C" notice), or
5. For interest and dividend accounts opened or instruments acquired after 1983, the payee fails to certify to you, under penalties of perjury, that he or she is **not** subject to backup withholding under 4 above.

Except as explained in 2 above, reportable "other" payments are subject to backup withholding only if 1 or 3 above applies.

Some payees are exempt from backup withholding. For a list of exempt payees and other information, see **Form W-9**, Request for Taxpayer Identification Number and Certification, and the separate **Instructions for the Requester of Form W-9**.

### Backup withholding will not apply to the following:

1. Real estate transactions reportable under section 6045(e),
2. Foreclosures and abandonments reportable under section 6050J,
3. Canceled debts reportable under section 6050P,
4. Distributions from Archer MSAs and HSAs,
5. Long-term care benefits,
6. Distributions from any retirement account, including IRAs,
7. Section 404(k) distributions from an employee stock ownership plan (ESOP),
8. Fish purchases for cash reportable under section 6050R,
9. Unemployment compensation,
10. State or local income tax refunds,
11. Qualified tuition program earnings, and
12. Coverdell ESA earnings.

**When to apply backup withholding.** Generally, the period for which the 28% should be withheld is as follows:

**1. Failure to furnish TIN in the manner required.** Withhold on payments made until the TIN is furnished in the manner required. Special backup withholding rules may apply if the payee has applied for a TIN. The payee may certify to this on Form W-9 by noting "Applied For" in the TIN block and by signing the form. This form then becomes an "awaiting-TIN" certificate, and the payee has 60 days to obtain a TIN and furnish it to you. If you do not receive a TIN from the payee within 60 days and you have not already begun backup withholding, begin backup withholding and continue until the TIN is provided.



*The 60-day exemption from backup withholding applies only to interest and dividend payments and certain payments made with respect to readily tradable instruments. Therefore, any other payment, such as nonemployee compensation, is subject to backup withholding even if the payee has applied for and is awaiting a TIN. For information about whether backup withholding applies during the 60-day period, see Regulations section 31.3406(g)-3.*

**2. Notice from the IRS that payee's TIN is incorrect ("B" notice).** You may choose to withhold on any reportable payment made to the account(s) subject to backup withholding

after receipt of the “B” notice, but you must withhold on any reportable payment made to the account more than 30 business days after you received the “B” notice. Stop withholding within 30 days after you receive a certified Form W-9 (or other form that requires the payee to certify under penalty of perjury).

**TIP** *The IRS will furnish a notice to you, and you are required to promptly furnish a copy of such notice, or an acceptable substitute, to the payee. For further information, see Regulations section 31.3406(d)-5 (recent amendments are effective after December 31, 2003) and Rev. Proc. 93-37, 1993-2 C.B. 477.*

*If you receive two incorrect TIN notices within 3 years for the same account, follow the procedures in Regulations section 31.3406(d)-5(g) and Rev. Proc. 93-37.*

**3. Notice from the IRS that payee is subject to backup withholding due to notified payee underreporting (“C” notice).** You may choose to withhold on any reportable payment made to the account(s) subject to backup withholding after receipt of the “C” notice, but you must withhold on any reportable payment made to the account more than 30 business days after you receive the “C” notice. The IRS will notify you in writing when to stop withholding, or the payee may furnish you a written certification from the IRS stating when the withholding should stop. In most cases, the stop date will be January 1 of the year following the year of the notice.

**TIP** *You must notify the payee when withholding under this procedure starts. For further information, see Regulations section 31.3406(c)-1(d).*

**4. Payee failure to certify that he or she is not subject to backup withholding.** Withhold on reportable interest and dividends until the certification has been received.

For exceptions to these general timing rules, see section 3406(e).

**TIP** *For information about backup withholding on gambling winnings, see the separate **Instructions for Forms W-2G and 5754**.*

**Reporting backup withholding.** Report backup withholding on Form 945. For more information, see the Instructions for Form 945. Also, report backup withholding and the amount of the payment on Forms W-2G, 1099-B, DIV, G, INT, MISC, OID, or PATR even if the amount of the payment is less than the amount for which an information return is normally required.

**Additional information.** For more information about backup withholding, see **Pub. 1679**, A Guide to Backup Withholding for Missing and Incorrect Name/TIN(s), and **Pub. 1281**, Backup Withholding for Missing and Incorrect Name/TIN(s) (Including Instructions for Reading Tape Cartridges).

## Penalties

The following penalties generally apply to the person required to file information returns. The penalties apply to paper filers as well as to magnetic media/electronic filers.

### Failure To File Correct Information Returns by the Due Date (Section 6721)

If you fail to file a correct information return by the due date and you cannot show reasonable cause, you may be subject to a penalty. The penalty applies if you fail to file timely, you fail to include all information required to be shown on a return, or you include incorrect information on a return. The penalty also applies if you file on paper when you were required to file on magnetic media, you report an incorrect TIN or fail to report a TIN, or you fail to file paper forms that are machine readable.

The amount of the penalty is based on when you file the correct information return. The penalty is:

- **\$15** per information return if you correctly file within 30 days (by March 30 if the due date is February 28); maximum penalty

\$75,000 per year (\$25,000 for small businesses, defined below).

- **\$30** per information return if you correctly file more than 30 days after the due date but by August 1; maximum penalty \$150,000 per year (\$50,000 for small businesses).
- **\$50** per information return if you file after August 1 or you do not file required information returns; maximum penalty \$250,000 per year (\$100,000 for small businesses).



*If you **do not** file corrections and you do not meet any of the exceptions to the penalty described below, the penalty is **\$50** per information return.*

**Small businesses—lower maximum penalties.** You are a small business if your average annual gross receipts for the 3 most recent tax years (or for the period you were in existence, if shorter) ending before the calendar year in which the information returns were due are \$5 million or less.

**Exceptions to the penalty.** The following are exceptions to the failure to file penalty:

1. The penalty will not apply to any failure that you can show was due to reasonable cause and not to willful neglect. In general, you must be able to show that your failure was due to an event beyond your control or due to significant mitigating factors. You must also be able to show that you acted in a responsible manner and took steps to avoid the failure.

2. An inconsequential error or omission is not considered a failure to include correct information. An inconsequential error or omission does not prevent or hinder the IRS from processing the return, from correlating the information required to be shown on the return with the information shown on the payee's tax return, or from otherwise putting the return to its intended use. Errors and omissions that are never inconsequential are those related to **(a)** a TIN, **(b)** a payee's surname, and **(c)** any money amount.

3. **De minimis rule for corrections.** Even though you cannot show reasonable cause, the penalty for failure to file correct information returns will not apply to a certain number of returns if you:

- a. Filed those information returns,
- b. Either failed to include all the information required on a return or included incorrect information, and
- c. Filed corrections by August 1.

If you meet all the conditions in a, b, and c above, the penalty for filing incorrect returns (but not for filing late) will not apply to the greater of 10 information returns or 1/2 of 1% of the total number of information returns you are required to file for the calendar year.

**Intentional disregard of filing requirements.** If any failure to file a correct information return is due to intentional disregard of the filing or correct information requirements, the penalty is at least \$100 per information return with no maximum penalty.

### Failure To Furnish Correct Payee Statements (Section 6722)

If you fail to provide correct payee statements and you cannot show reasonable cause, you may be subject to a penalty. The penalty applies if you fail to provide the statement by January 31 (see part **H** on page GEN-9), you fail to include all information required to be shown on the statement, or you include incorrect information on the statement. “Payee statement” has the same meaning as “statement to recipient” as used in part **H** on page GEN-9.

The penalty is \$50 per statement, no matter when the correct statement is furnished, with a maximum of \$100,000 per year. The penalty is **not** reduced for furnishing a correct statement by August 1.

**Exception.** An inconsequential error or omission is not considered a failure to include correct information. An inconsequential error or omission cannot reasonably be expected to prevent or hinder the payee from timely receiving correct information and reporting it on his or her income tax return or from otherwise putting the statement to its intended use. Errors and omissions that are never inconsequential are

those relating to (a) a dollar amount, (b) a significant item in a payee's address, (c) the appropriate form for the information provided (i.e., whether the form is an acceptable substitute for the official IRS form), and (d) whether the statement was furnished in person or by "statement mailing," when required.

**Intentional disregard of payee statement requirements.** If any failure to provide a correct payee statement is due to intentional disregard of the requirements to furnish a correct payee statement, the penalty is at least \$100 per payee statement with no maximum penalty.

### Forms 1099-Q, 1099-SA, 5498, 5498-ESA, and 5498-SA

The penalties under sections 6721 and 6722 **do not** apply to:

Forms	Filed Under Code Section
1099-SA and 5498-SA	220(h) and 223
5498	408(i) and 408(l)
5498-ESA	530(h)
1099-Q	529(d) and 530(h)

The penalty for failure to timely file Forms 1099-SA, 5498-SA, 5498, 5498-ESA, or 1099-Q is \$50 per return with no maximum, unless the failure is due to reasonable cause. See section 6693.

### Civil Damages for Fraudulent Filing of Information Returns

If you willfully file a fraudulent information return for payments you claim you made to another person, that person may be able to sue you for damages. You may have to pay \$5,000 or more.


## Magnetic Media/Electronic Reporting

Magnetic media reporting may be required for filing all information returns discussed in this publication (see **Who must file on magnetic media**) below. Acceptable forms of magnetic media are IBM 3480, 3490, 3490E, 3590, or 3590E tape cartridges; and 3 1/2-inch diskettes.



*For returns filed after December 31, 2006, IRS/MCC will no longer accept 3 1/2-inch diskettes for filing information returns.*

**Pub. 1220**, Specifications for Filing Forms 1098, 1099, 5498, and W-2G Electronically or Magnetically, is the revenue procedure for reporting electronically or magnetically. Different types of payments, such as interest, dividends, and rents, may be reported on the same tape or other submission.

Electronic submissions are filed using the Filing  Information Returns Electronically System (FIRE System). The FIRE System operates 24 hours a day, 7 days a week. You may access the FIRE System via the Internet at <http://FIRE.IRS.gov>. See Pub. 1220 for more information.

**Due dates.** File Forms 1098, 1099, or W-2G on magnetic media by February 28, 2005. If you file electronically, you may file by March 31, 2005. File Form 5498, 5498-ESA, or 5498-SA by May 31, 2005. See part **H** on page GEN-9 about providing Forms 1098, 1099, 5498, and W-2G or statements to recipients.

**Extension of time to file.** For information about requesting an extension of time to file, see **Extension** on page GEN-7.



*If you file electronically or on magnetic media, do not file the same returns on paper.*

**Who must file on magnetic media.** If you are required to file 250 or more information returns, you must file on magnetic media. The 250-or-more requirement applies separately to each type of form. For example, if you must file 500 Forms 1098 and 100 Forms 1099-A, you must file Forms 1098 on magnetic

media, but you are not required to file Forms 1099-A on magnetic media.

The magnetic media filing requirement does not apply if you apply for and receive a hardship waiver. See **How to request a waiver from filing on magnetic media** below.



*The IRS encourages you to file on magnetic media or electronically even though you are filing fewer than 250 returns.*

**Filing requirement applies separately to originals and corrections.** The magnetic media filing requirements apply separately to original returns and corrected returns. Originals and corrections are not aggregated to determine whether you are required to file on magnetic media. For example, if you file 400 Forms 1098 on magnetic media and you are making 75 corrections, your corrections can be filed on paper because the number of corrections for Form 1098 is less than the 250 filing requirement. However, if you were filing 250 or more Form 1098 corrections, they would have to be filed on magnetic media.

**Reporting incorrect payer name and/or TIN.** If a payer discovers an error in reporting the payer name and/or TIN, write a letter to IRS/MCC (see below) containing the following information:

1. Name and address of the payer,
2. Type of error (including the incorrect payer name/TIN that was reported),
3. Tax year,
4. Payer TIN,
5. Transmitter Control Code (TCC), if applicable,
6. Type of return,
7. Number of payees, and
8. Filing method (paper, electronic, or magnetic media).

Send the letter to IRS-Martinsburg Computing Center, Information Reporting Program, 240 Murall Drive, Kearneysville, WV 25430. Also see Pub. 1220, Part A, Section 11.

If a payer realizes duplicate reporting or a large percentage of incorrect information has been filed, contact the information reporting customer service site at 1-866-455-7438 for further instructions.

**How to get approval to file on magnetic media.** File **Form 4419**, Application for Filing Information Returns Electronically/Magnetically, at least 30 days before the due date of the returns. File only one Form 4419 for all types of returns that will be filed on magnetic media. Once you have received approval, you need not reapply each year. The IRS will provide a written reply to the applicant and further instructions at the time of approval, usually within 30 days. A magnetic media reporting package, which includes all the necessary transmittals and instructions, will be mailed to all approved filers.

**How to request a waiver from filing on magnetic media.** To receive a waiver from the required filing of information returns on magnetic media, submit **Form 8508**, Request for Waiver From Filing Information Returns Magnetically, at least 45 days before the due date of the returns. You cannot apply for a waiver for more than 1 tax year at a time. If you need a waiver for more than 1 tax year, you must reapply at the appropriate time each year.

If a waiver for original returns is approved, any corrections for the same types of returns will be covered under the waiver. However, if you submit original returns on magnetic media but you want to submit your corrections on paper, a waiver must be approved for the corrections if you must file 250 or more corrections.

If you receive an approved waiver, do not send a copy of it to the service center where you file your paper returns. Keep the waiver for your records only.

**Single application.** Submit both Forms 4419 and 8508 to apply for approval for filing returns on magnetic media, and if the approval is not granted, to apply for a waiver from the magnetic media requirement.



**Penalty.** If you are required to file on magnetic media but fail to do so, and you do not have an approved waiver, you may be subject to a penalty of \$50 per return for failure to file on magnetic media unless you establish reasonable cause. However, you can file up to 250 returns on paper; those returns will not be subject to a penalty for failure to file on magnetic media.

The penalty applies separately to original returns and corrected returns. See **Filing requirement applies separately to originals and corrections** on page GEN-5.

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## Paper Document Reporting

If you are required to file 250 or more information returns, see **Magnetic Media/Electronic Reporting** on page GEN-5.

**Common errors.** Be sure to check your returns to prevent the following common errors:

1. Duplicate filing. **Do not** send the same information to the IRS more than once.
2. Filer's name, address, and TIN are not the same on Form 1096 and the attached Forms 1099, 1098, 5498, or W-2G.
3. Decimal point to show dollars and cents omitted. For example, 1230.00 is correct, not 1230.
4. Two or more types of returns submitted with one Form 1096 (e.g., Forms 1099-INT and 1099-MISC with one Form 1096). You must submit a separate Form 1096 with each type of return.

**Required format.** Because paper forms are read by machine (optical character recognition equipment), all Forms 1096 and Copies A of Forms 1098, 1099, and 5498 must be prepared in accordance with the following instructions. If these instructions are not followed, you may be subject to a penalty of \$50 for each incorrectly filed document.

1. **Do not** cut or separate Copies A of the forms that are printed two or three to a sheet (except Form W-2G). Forms 1098, 1099, and 5498 are printed two or three to an 8 x 11 inch sheet. Form 1096 is printed one to an 8 x 11 inch sheet. These forms must be submitted to the IRS on the 8 x 11 inch sheet. If at least one form on the page is correctly completed, you must submit the entire page. Forms W-2G may be separated and submitted as single forms. Send the forms to the IRS in a flat mailing (not folded).
2. **No photocopies** of any forms are acceptable. See **How To Get Forms and Publications** on page GEN-3.
3. **Do not** staple, tear, or tape any of these forms. It will interfere with the IRS's ability to scan the documents.
4. Pinfeed holes on the form are **not** acceptable. Pinfeed strips outside the 8 x 11 inch area must be removed before submission, without tearing or ripping the form. Substitute forms prepared in continuous or strip form must be burst and stripped to conform to the size specified for a single sheet (8 x 11 inches) before they are filed with the IRS.
5. **Do not** change the title of any box on any form. Do not use a form to report information that is not properly reportable on that form. If you are unsure of where to report the data, call the information reporting call site at 866-455-7438 (toll free).
6. Report information only in the appropriate boxes provided on the forms. Make only one entry in each box unless otherwise indicated in the form's specific instructions.
7. **Do not** submit any copy other than Copy A to the IRS.
8. **Do not** use prior year forms unless you are reporting prior year information; do not use subsequent year forms for the current year. Because forms are read by machine, you **must** use the current year form to report current year information.
9. Use the official forms or substitute forms that meet the specifications in the 2004 Pub. 1179. If you submit substitute forms that do not meet the current specifications and that are not machine scannable, you may be subject to a penalty of \$50 for each return for improper format.
10. **Do not** use dollar signs (\$) (they are preprinted on the forms), ampersands (&), asterisks (\*), commas (,), or other special characters in money amount boxes.

**Suggested format.** Below are suggestions that will allow the IRS to process the submitted forms in the most economical manner:

1. Although handwritten forms are acceptable, the IRS prefers that you type or machine print data entries using 10 pitch (pica) or 12 pitch (elite) black type. Use block print, not script characters. Insert data in the middle of the blocks well separated from other printing and guidelines, and take other measures to guarantee a dark black, clear, sharp image.
2. Do not enter 0 (zero) or "None" in money amount boxes when no entry is required. Leave the boxes blank unless the instructions specifically require that you enter a 0 (zero). For example, in some cases, you must enter 0 (zero) to make corrections. See **Corrected Returns on Paper Forms** on page GEN-11.
3. Do not enter number signs (#); for example, enter RT 2, not Rt. #2.

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## A. Who Must File

See the separate specific instructions for each form.

**Nominee/middleman returns.** Generally, if you receive a Form 1099 for amounts that actually belong to another person, you are considered a nominee recipient. You must file a Form 1099 (the same type of Form 1099 you received) for each of the other owners showing the amounts allocable to each. You must also furnish a Form 1099 to each of the other owners. File the new Form 1099 with Form 1096 with the Internal Revenue Service Center for your area. On each new Form 1099, list yourself as the "payer" and the other owner as the "recipient." On Form 1096, list yourself as the "filer." A husband or wife is not required to file a nominee return to show amounts owned by the other. The nominee, not the original payer, is responsible for filing the subsequent Forms 1099 to show the amount allocable to each owner.

**Successor/predecessor reporting.** A successor business (a corporation, partnership, or sole proprietorship) and a predecessor business (a corporation, partnership, or sole proprietorship) may agree that the successor will assume all or some of the predecessor's information reporting responsibilities. This would permit the successor to file one Form 1099, 1098, 5498, or W-2G for each recipient combining the predecessor's and successor's reportable amounts, including any withholding. If they so agree and the successor satisfies the predecessor's obligations and the conditions described below, the predecessor does not have to file the specified information returns for the acquisition year. If the successor and predecessor do not agree, or if the requirements described are not met, the predecessor and the successor each must file Forms 1099, 1098, 5498, and W-2G for their own reportable amounts as they usually would. For more information and the rules that apply to filing combined Forms 1042-S, see Rev. Proc. 99-50, 1999-2 C.B. 757.

The combined reporting procedure is available when all the following conditions are met:

1. The successor acquires from the predecessor substantially all the property (**a**) used in the trade or business of the predecessor, including when one or more corporations are absorbed by another corporation under a merger agreement, or (**b**) used in a separate unit of a trade or business of the predecessor.
2. The predecessor is required to report amounts, including any withholding, on information returns for the year of acquisition for the period before the acquisition.
3. The predecessor is not required to report amounts, including withholding, on information returns for the year of acquisition for the period after the acquisition.

**Combined reporting agreement.** The predecessor and the successor must agree on the specific forms to which the combined reporting procedure applies and that the successor assumes the predecessor's entire information reporting obligations for these forms. The predecessor and successor may agree to:



1. Use the combined reporting procedure for all Forms 1099, 1098, 5498, and W-2G, or

2. Limit the use of the combined reporting procedure to (a) specific forms or (b) specific reporting entities, including any unit, branch, or location within a particular business entity that files its own separate information returns. For example, if the predecessor's and successor's only compatible computer or recordkeeping systems are their dividends paid ledgers, they may agree to use the combined reporting procedure for Forms 1099-DIV only. Similarly, if the only compatible systems are in their midwest branches, they may agree to use the combined reporting procedure for only the midwest branches.

**Combined reporting procedure.** On each Form 1099, 1098, 5498, and W-2G filed by the successor, the successor must combine the predecessor's (before the acquisition) and successor's reportable amounts, including any withholding, for the acquisition year and report the aggregate. For transactional reporting on **Form 1099-B**, Proceeds From Broker and Barter Exchange Transactions, the successor must report each of the predecessor's transactions and each of its own transactions on each Form 1099-B. The successor may include with the form sent to the recipient additional information explaining the combined reporting.

For purposes of the combined reporting procedure, the sharing of TINs and other information obtained under section 3406 for information reporting and backup withholding purposes does not violate the confidentiality rules in section 3406(f).

**Statement required.** The successor must file a statement with the IRS indicating the forms that are being filed on a combined basis under Rev. Proc. 99-50. The statement must:

1. Include the predecessor's and successor's names, addresses, telephone numbers, EINs, and the name and telephone number of the person responsible for preparing the statement.
2. Reflect separately the amount of Federal income tax withheld by the predecessor and by the successor for each type of form being filed on a combined basis (e.g., Form 1099-R or 1099-MISC).
3. Be sent separately from Forms 1099, 1098, 5498, and W-2G by the forms' due date to: IRS-Martinsburg Computing Center, Attn: Chief, Information Returns Branch, Mail Stop 360, 230 Murall Dr., Kearneysville, WV 25430. **Do not** send Form 1042-S statements to this address. Instead, use the address given in the Instructions for Form 1042-S. See Rev. Proc. 99-50.

**Qualified settlement funds.** A qualified settlement fund must file information returns for distributions to claimants if any transferor to the fund would have been required to file if the transferor had made the distributions directly to the claimants.

For distributions to transferors, a fund is subject to the information reporting requirements of sections 6041 and 6041A and may be required to file Form 1099-MISC. For payments made by the fund on behalf of a claimant or transferor, the fund is subject to these same rules and may have to file Form 1099-MISC for the payment to a third party. For information reporting purposes, a payment made by the fund on behalf of a claimant or transferor is considered a distribution to the claimant or transferor and is also subject to information reporting requirements.

The same filing requirements, exceptions, and thresholds apply to qualified settlement funds as apply to any other payer. That is, the fund must determine the character of the payment (e.g., interest, fixed and determinable income, or gross proceeds from broker transactions) and to whom the payment is made (e.g., corporation or individual).

For more information, see Regulations section 1.468B-2(l). In addition, see Proposed Regulations sections 1.468B-1(k) and 1.468B-6 through 1.468B-9 that relate to escrow and other similar funds.

**Payments to foreign persons.** See the Instructions for Form 1042-S, relating to U.S. source income of foreign persons, for reporting requirements relating to payments to foreign persons.

## B. When To File

File Forms 1098, 1099, or W-2G on paper or magnetic media by February 28, 2005 (March 31, 2005, if filing electronically). Also file Form 1096 with paper forms. Brokers may file Forms 1096 and 1099-B anytime after the reporting period they elect to adopt (month, quarter, or year), but not later than the due date. File Form 1096 with Forms 5498, 5498-ESA, and 5498-SA by May 31, 2005.

You will meet the requirement to file if the form is properly addressed and mailed on or before the due date. If the regular due date falls on a Saturday, Sunday, or legal holiday, file by the next business day. A business day is any day that is not a Saturday, Sunday, or legal holiday. See part **H** on page GEN-9 about providing Forms 1098, 1099, 5498, and W-2G or statements to recipients.

**Private delivery services.** You can use certain private delivery services designated by the IRS to meet the "timely mailing as timely filing" rule for information returns. The most recent list of designated private delivery services was published in September 2002 by the IRS. The list includes only the following:

- Airborne Express (Airborne): Overnight Air Express Service, Next Afternoon Service, and Second Day Service.
- DHL Worldwide Express (DHL): DHL "Same Day" Service and DHL USA Overnight.
- Federal Express (FedEx): FedEx Priority Overnight, FedEx Standard Overnight, FedEx 2 Day, FedEx International Priority, and FedEx International First.
- United Parcel Service (UPS): UPS Next Day Air, UPS Next Day Air Saver, UPS 2nd Day Air, UPS 2nd Day Air A.M., UPS Worldwide Express Plus, and UPS Worldwide Express.

The private delivery service can tell you how to get written proof of the mailing date.



*Private delivery services cannot deliver items to P.O. boxes. You must use the U.S. Postal Service to mail any item to an IRS P.O. box address.*

**Reporting period.** Forms 1098, 1099, and W-2G are used to report amounts received, paid, credited, or canceled in the case of Form 1099-C, during the calendar year. Forms 5498, 5498-ESA, and 5498-SA are used to report amounts contributed and the fair market value of an account for the calendar year.

**Extension.** For paper or magnetic media/electronic filing, you can get a 30-day extension of time to file by sending **Form 8809**, Application for Extension of Time To File Information Returns, to the address shown on Form 8809. No signature or explanation is required for the extension. However, you must file Form 8809 by the due date of the returns in order to get the 30-day extension. Under certain hardship conditions you may apply for an additional 30-day extension. See Form 8809 for more information.



*If you are requesting extensions of time to file for **more than 50** payers, you must submit the extension requests magnetically or electronically. See Pub. 1220.*

For information on extensions for providing statements to recipients, see **Extension** on page GEN-11.

## C. Where To File

Send all information returns filed on paper to the following:

**If your principal business, office or agency, or legal residence in the case of an individual, is located in**

**Use the following Internal Revenue Service Center address**

Alabama, Arizona, Florida, Georgia,  
Louisiana, Mississippi, New Mexico, North  
Carolina, Texas, Virginia Austin, TX 73301

Arkansas, Connecticut, Delaware,  
Kentucky, Maine, Massachusetts, New  
Hampshire, New Jersey, New York, Ohio,  
Pennsylvania, Rhode Island, Vermont,  
West Virginia Cincinnati, OH 45999

Illinois, Indiana, Iowa, Kansas, Michigan,  
Minnesota, Missouri, Nebraska, North  
Dakota, Oklahoma, South Carolina, South  
Dakota, Tennessee, Wisconsin Kansas City, MO  
64999

Alaska, California, Colorado, District of  
Columbia, Hawaii, Idaho, Maryland,  
Montana, Nevada, Oregon, Utah,  
Washington, Wyoming Ogden, UT 84201

If your legal residence or principal place of business or principal office or agency is outside the United States, file with the Internal Revenue Service Center, Cincinnati, OH 45999.

Send all information returns filed magnetically to IRS-Martinsburg Computing Center, Information Reporting Program, 230 Murall Drive, Kearneysville, WV 25430.

## D. Filing Returns With the IRS

The IRS strongly encourages the quality review of data before filing to prevent erroneous notices being mailed to payees (or others for whom information is being reported).

If you must file any Form 1098, 1099, 5498, or W-2G with the IRS and you are filing paper forms, you must send a Form 1096 with each type of form as the transmittal document. You must group the forms by form number and submit each group with a separate Form 1096. For example, if you file Forms 1098, 1099-A, and 1099-MISC, complete one Form 1096 to transmit Forms 1098, another for Forms 1099-A, and a third for Forms 1099-MISC. Specific instructions for completing Form 1096 are included on the form. Also, see **Transmitters, paying agents, etc.** below. For information about filing corrected returns, see **Corrected Returns on Paper Forms** on page GEN-11.

If you are filing on magnetic media, **Form 4804**, Transmittal of Information Returns Reported Magnetically, must accompany your submissions.



*Form 4804 is no longer required if you file information returns electronically. See **Magnetic Media/Electronic Reporting** on page GEN-5.*

For information on the preparation of transmittal documents for magnetic media and paper document reporting (Forms 4804 and 1096), see Rev. Proc. 84-24, 1984-1 C.B. 465.

Report payments on the appropriate form, as explained in the separate specific instructions.

See Pub. 1179 for specifications for private printing of substitute information returns. You may not request special consideration. Only forms that conform with the official form and the specifications in Pub. 1179 are acceptable.

**Transmitters, paying agents, etc.** A transmitter, service bureau, paying agent, or disbursing agent (hereafter referred to as "agent") may sign Form 1096 or Form 4804 on behalf of any person required to file (hereafter referred to as "payer") if the conditions in 1 and 2 below are met:

1. The agent has the authority to sign the form under an agency agreement (oral, written, or implied) that is valid under state law and
2. The agent signs the form and adds the caption "For: (Name of payer)."

Signing of the form by an authorized agent on behalf of the payer does not relieve the payer of the liability for penalties for not filing a correct, complete, and timely Form 1096 or Form 4804 and accompanying returns.

Forms 1098, 1099, 5498, W-2G, or acceptable substitute statements to recipients issued by a service bureau or agent should show the same payer's name as shown on the information returns filed with the IRS.

For information about the election to report and deposit backup withholding under the agent's TIN and how to prepare forms if the election is made, see Rev. Proc. 84-33, 1984-1 C.B. 502.

**Keeping copies.** Generally, keep copies of information returns you filed with the IRS or have the ability to reconstruct the data for at least 3 years, 4 years for Form 1099-C, from the due date of the returns. Keep copies of information returns for 4 years if backup withholding was imposed.

## E. Shipping and Mailing

Send the forms to the IRS in a flat mailing (not folded). If you are sending many forms, you may send them in conveniently sized packages. On each package, write your name and TIN, number the packages consecutively, and place Form 1096 in package number one. Postal regulations require forms and packages to be sent by First-Class Mail.

## F. Recipient Names and Taxpayer Identification Numbers (TINs)

**Recipient name.** Show the full name and address in the section provided on the information return. If payments have been made to more than one recipient or the account is in more than one name, show on the first name line the name of the recipient whose TIN is first shown on the return. You may show the names of any other individual recipients in the area below the first line, if desired. Form W-2G filers, see the Instructions for Forms W-2G and 5754.

For **sole proprietors**, you must show the individual's name on the first name line; on the second name line, you may enter the "doing business as (DBA)" name. You may not enter only the DBA name. For the TIN, enter either the individual's SSN or the EIN of the business (sole proprietorship). The IRS prefers that you enter the SSN.

For a single-member **limited liability company (LLC)** (including a foreign LLC with a U.S. owner) that is disregarded as an entity separate from its owner under Regulations section 301.7701-3, enter the individual's name only on the first name line and the LLC's name on the second name line. For the TIN, enter the individual's SSN (or EIN, if applicable). If the LLC is a corporation, partnership, etc., enter the entity's EIN.

**TINs.** TINs are used to associate and verify amounts you report to the IRS with corresponding amounts on tax returns. Therefore, it is important that you furnish correct names, social security numbers (SSNs), individual taxpayer identification numbers (ITINs), or employer identification numbers (EINs) for recipients on the forms sent to the IRS.

**Requesting a recipient's TIN.** If the recipient is a U.S. person (including a U.S. resident alien), the IRS suggests that you request the recipient complete Form W-9 (or Form W-9S, if appropriate). See the Instructions for the Requester of Form W-9 for more information on how to request a TIN.

If the recipient is a foreign person, the IRS suggests that you request the recipient complete the appropriate Form W-8. See the **Instructions for the Requester of Forms W-8BEN, W-8ECI, W-8EXP, and W-8IMY.**



*U.S. resident aliens who rely on a "saving clause" of a tax treaty are to complete Form W-9, not Form W-8BEN. See **Pub. 515, Withholding of Tax on Nonresident Aliens and Foreign Entities, and Pub. 519.***

You may be subject to a penalty for an incorrect or missing TIN on an information return. See **Penalties** on page GEN-4. You are required to maintain the confidentiality of information obtained on a Form W-9/W-9S relating to the taxpayer's identity (including SSNs, EINs, and ITINs), and you may use such information only to comply with the tax laws.



*If the recipient does not provide a TIN, leave the box for the recipient's TIN blank on the Form 1098, 1099, 5498, or W-2G. See **Backup Withholding** on page GEN-3. Only one recipient TIN can be entered on the form.*

**The TIN for individual recipients of information returns is the SSN.** See the information about sole proprietors on page GEN-8. For other recipients, including corporations, partnerships, and estates, the TIN is the EIN. For LLCs, see the information on LLC on page GEN-8.

SSNs have nine digits separated by two hyphens (000-00-0000), and EINs have nine digits separated by only one hyphen (00-0000000).

**Electronic submission of Forms W-9.** Requesters may establish a system for payees and payees' agents to submit Forms W-9 electronically, including by fax. A requester is anyone required to file an information return. A payee is anyone required to provide a TIN to the requester.

**Payee's agent.** A payee's agent can be an investment advisor (corporation, partnership, or individual) or an introducing broker. An investment advisor must be registered with the Securities Exchange Commission (SEC) under The Investment Advisers Act of 1940. The introducing broker is a broker-dealer that is regulated by the SEC and the National Association of Securities Dealers, Inc., and that is not a payer. Except for a broker who acts as a payee's agent for "readily tradable instruments," the advisor or broker must show in writing to the payer that the payee authorized the advisor or broker to transmit the Form W-9 to the payer.

Generally, the electronic system must:

1. Ensure the information received is the information sent and document all occasions of user access that result in the submission.
2. Make reasonably certain the person accessing the system and submitting the form is the person identified on Form W-9.
3. Provide the same information as the paper Form W-9.
4. Be able to supply a hard copy of the electronic Form W-9 if the Internal Revenue Service requests it.
5. Require as the final entry in the submission an electronic signature by the payee whose name is on Form W-9 that authenticates and verifies the submission. The electronic signature must be under penalties of perjury and the perjury statement must contain the language of the paper Form W-9.



*For Forms W-9 that are not required to be signed, the electronic system need not provide for an electronic signature or a perjury statement.*

Additional requirements may apply. See Announcement 98-27, 1998-1 C.B. 865 and Announcement 2001-91, 2001-2 C.B. 221.

**Electronic submission of Forms W-9S.** See the Instructions for Forms 1098-E and 1098-T.

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## G. Filer's Name, Identification Number, and Address

The TIN for filers of information returns, including sole proprietors and nominees/middlemen, is the Federal EIN. However, sole proprietors and nominees/middlemen who are not otherwise required to have an EIN should use their SSNs. A sole proprietor is not required to have an EIN unless he or she has a Keogh plan or must file excise or employment tax returns. See **Pub. 583**, Starting a Business and Keeping Records.

The filer's name and TIN should be consistent with the name and TIN used on the filer's other tax returns. The name of the filer's paying agent or service bureau must not be used in place of the name of the filer.

If you do not have an EIN, you may apply for one online. Go to the IRS website [www.irs.gov/businesses/small](http://www.irs.gov/businesses/small) and click on the link for EINs. You may also apply by calling 1-800-829-4933 or by faxing or mailing form SS-4 to the IRS. See Form SS-4 for more information.

Enter your street address including the room, suite, or other unit number on the forms.

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## H. Statements to Recipients (Borrowers, Debtors, Insureds, Participants, Payers/Borrowers, Policyholders, Students, Transferors, or Winners on Certain Forms)

If you are required to file Forms 1099, 1098, 5498, or W-2G, you must also furnish statements to recipients containing the information furnished to the IRS and, in some cases, additional information. Be sure that the statements you provide to recipients are clear and legible.

**Substitute statements.** If you are not using the official IRS form to furnish statements to recipients, see Pub. 1179 for specific rules about providing "substitute" statements to recipients. Generally, a substitute is any statement other than Copy B (and C in some cases) of the official form. You may develop them yourself or buy them from a private printer. However, the substitutes must comply with the format and content requirements specified in Pub. 1179.

**Telephone number.** You are required to include the telephone number of a person to contact on the following statements to recipients: W-2G, 1098, 1098-E, 1098-T, 1099-A, 1099-B, 1099-CAP, 1099-DIV, 1099-G (excluding state and local income tax refunds), 1099-H, 1099-INT, 1099-LTC, 1099-MISC (excluding fishing boat proceeds), 1099-OID, 1099-PATR, 1099-Q, and 1099-S. You may include the telephone number in any conspicuous place on the statements. This number must provide direct access to an individual who can answer questions about the statement. Although not required, if you report on other Forms 1099 and 5498, you are encouraged to furnish telephone numbers.

**Rules for furnishing statements.** Different rules apply to furnishing statements to recipients depending on the type of payment (or contribution) you are reporting and the form you are filing.



*If you are reporting a payment that includes noncash property, show the fair market value of the property at the time of payment. Although, generally, you are not required to report payments smaller than the minimum described for a form, you may prefer, for economy and your own convenience, to file Copies A for all payments. The IRS encourages this.*

See the heading below for the type of payment you are reporting. The headings are **(a) Interest, dividend, and royalty payments;** **(b) Real estate transactions;** and **(c) Other payments.**

**Interest, dividend, and royalty payments.** For payments of dividends under section 6042 (reported on Form 1099-DIV) or patronage dividends under section 6044 (reported on Form 1099-PATR), interest (including original issue discount) under section 6049 (reported on Form 1099-INT or 1099-OID), or royalties under section 6050N (reported on Form 1099-MISC or 1099-S), you are required to furnish an official IRS Form 1099 or an acceptable substitute Form 1099 to a recipient either in person, by First-Class Mail to the recipient's last known address, or electronically (see **Electronic recipient statements** on page GEN-11). Statements may be sent by



intraoffice mail if you use intraoffice mail to send account information and other correspondence to the recipient.

**Statement mailing requirements for Forms 1099-DIV, 1099-INT, 1099-OID, and 1099-PATR, and forms reporting royalties only.** The following statement mailing requirements apply only to Forms 1099-DIV (except for section 404(k) dividends), 1099-INT (except for interest reportable in the course of your trade or business under section 6041), 1099-OID, 1099-PATR, and timber royalties reported under section 6050N (on Form 1099-MISC or 1099-S). The mailing must contain the official IRS Form 1099 or an acceptable substitute and may also contain the following **enclosures**: (a) Form W-2, applicable Form W-8, Form W-9, or other Forms W-2G, 1098, 1099, and 5498 statements; (b) a check from the account being reported; (c) a letter explaining why no check is enclosed; (d) a statement of the person's account shown on Forms 1099, 1098, or 5498; and (e) a letter explaining the tax consequences of the information shown on the recipient statement.

A statement of the person's account (year-end account summary) that you are permitted to enclose in a statement mailing may include information similar to the following: (a) tax-exempt interest (including accrued OID) and the part of such interest exempt from the alternative minimum tax or from state or local income tax; (b) the part of a mutual fund distribution that is interest on U.S. Treasury obligations; (c) accrued interest expense on the purchase of a debt obligation; and (d) the cost or other basis of securities and the gain/loss on the sale of securities.

No additional enclosures, such as advertising, promotional material, or a quarterly or annual report, are permitted. Even a sentence or two on the year-end statement describing new services offered by the payer is not permitted. Logos are permitted on the envelope and on any nontax enclosures.

**TIP** *The IRS intends to amend the regulations to allow the use of certain logos and identifying slogans on substitute statements to recipients that are subject to the statement mailing requirements. Until the new regulations are issued, the IRS will not assess penalties for the use of a logo (including the name of the payer in any typeface, font, or stylized fashion and/or a symbolic icon) or slogan on a statement to a recipient if the logo or slogan is used by the payer in the ordinary course of its trade or business. In addition, use of the logo or slogan must not make it less likely that a reasonable payee will recognize the importance of the statement for tax reporting purposes. See Notice 96-62, 1996-2 C.B. 228.*

A recipient statement may be perforated to a check or to a statement of the recipient's specific account. The check or account statement to which the recipient statement is perforated must contain, in bold and conspicuous type, the legend "Important Tax Return Document Attached."

The legend "Important Tax Return Document Enclosed" must appear in a bold and conspicuous manner on the outside of the envelope and on each letter explaining why no check is enclosed, or on each check or account statement that is not perforated to the recipient statement. The legend is not required on any tax form, tax statement, or permitted letter of tax consequences included in a statement mailing. Further, you need not pluralize the word "document" in the legend simply because more than one recipient statement is enclosed.

**TIP** *If you provide recipient statements in a "separate mailing" that contains only recipient statements, Forms W-8 and W-9, and a letter explaining the tax consequences of the information shown on a recipient statement included in the envelope, you are not required to include the legend "Important Tax Return Document Enclosed" on the envelope.*

**Substitute forms.** You may furnish to the recipient Copy B of the official IRS form, or you may use substitute Forms 1099-DIV, 1099-INT, 1099-OID, or 1099-PATR, if they contain the same language as the official IRS forms and they comply

with the rules in Pub. 1179, relating to substitute Forms 1099. Applicable box titles and numbers must be clearly identified, using the same wording and numbering as the official IRS form. However, for Form 1099-INT, if your substitute does not contain box 3, "Interest on U.S. Savings Bonds and Treas. obligations," you may omit "not included in box 3" from the box 1 title. For information on substitute Forms 1099-MISC, see **Other payments** below. For Forms 1099-S, see **Real estate transactions** below.

**TIP** *All substitute statements to recipients must contain the tax year, form number, and form name prominently displayed together in one area of the statement. For example, they could be shown in the upper right part of the statement.*

If you are using substitutes, the IRS encourages you to use boxes so that the substitute has the appearance of a form. The substitute form must contain the applicable instructions as on the front and back of Copy B of the official IRS form. See Pub. 1179 for additional requirements. Certain "composite" statements are permitted. See Pub. 1179.

**Real estate transactions.** You must furnish a statement to the transferor containing the same information reported to the IRS on Form 1099-S. You may use Copy B of the official IRS Form 1099-S or a substitute form that complies with Pub. 1179 and Regulations section 1.6045-4(m). You may use a Uniform Settlement Statement (under RESPA) as the written statement if it is conformed by including on the statement the legend shown on Form 1099-S and by designating which information is reported to the IRS on Form 1099-S. You may furnish the statement to the transferor in person, by mail, or electronically. Furnish the statement at or after closing but by January 31 of the following year.

The statement mailing requirements explained above **do not** apply to statements to transferors for proceeds from real estate transactions reported on Form 1099-S. However, the statement mailing requirements do apply to statements to transferors for timber royalties reportable under section 6050N on Form 1099-S.

**Other payments.** Statements to recipients for Forms 1098, 1098-E, 1098-T, 1099-A, 1099-B, 1099-C, 1099-CAP, 1099-G, 1099-H, 1099-LTC, 1099-MISC, 1099-Q, 1099-R, 1099-SA, 5498, 5498-ESA, 5498-SA, W-2G, 1099-DIV only for section 404(k) dividends reportable under section 6047, 1099-INT only for interest reportable in the course of your trade or business under section 6041, or 1099-S only for royalties need not be, but can be, a copy of the official paper form filed with the IRS. If you do not use a copy of the paper form, the form number and title of your **substitute** must be the same as the official IRS form. All information required to be reported must be numbered and titled on your substitute in substantially the same manner as on the official IRS form. However, if you are reporting a payment as "Other income" in box 3 of Form 1099-MISC, you may substitute appropriate explanatory language for the box title. For example, for payments of accrued wages to a beneficiary of a deceased employee required to be reported on Form 1099-MISC, you might change the title of box 3 to "Beneficiary payments" or something similar.

Appropriate instructions to the recipient, similar to those on the official IRS form, must be provided to aid in the proper reporting of the items on the recipient's income tax return. For payments reported on Form 1099-B, rather than furnish appropriate instructions with each Form 1099-B statement, you may furnish to the recipient one set of instructions for all statements required to be furnished to a recipient in a calendar year.

Except for royalties reported on Form 1099-MISC, the statement mailing requirements explained earlier **do not** apply to statements to recipients for information reported on the forms listed above. You may combine the statements with other reports or financial or commercial notices, or expand them to include other information of interest to the recipient. Be sure that all copies of the forms are legible. Certain "composite" statements are permitted. See Pub. 1179.

**When to furnish forms or statements.** Generally, you must furnish Forms 1098, 1099, and W-2G information by January 31, 2005. However, you may issue them earlier in some situations, as provided by the regulations. For example, you may furnish Form 1099-INT to the recipient on redemption of U.S. Savings Bonds at the time of redemption. Brokers and barter exchanges may furnish Form 1099-B anytime but not later than January 31, 2005.

Trustees or issuers of traditional IRAs must furnish participants with a statement of the value of the participant's account, and RMD if applicable, by January 31, 2005. The fair market value of SEP IRAs must also be furnished to the participant by January 31, 2005. Traditional IRA, Roth IRA, SEP, or SIMPLE contribution information must be furnished to the participant by May 31, 2005. However, Coverdell ESA contribution information must be furnished to the beneficiary by May 2, 2005.

Trustees of a SIMPLE must furnish a statement of the account balance and the account activity by January 31, 2005.

For real estate transactions, you may furnish the statement to the transferor at closing or by mail on or before January 31, 2005.

Filers of Form 1099-G who report state or local income tax refunds, credits, or offsets must furnish the statements to recipients **during** January 2005.

See the **Guide to Information Returns** on pages GEN-16 and GEN-17 for the date other information returns are due to the recipient.

You will meet the requirement to furnish the statement if it is properly addressed and mailed, or posted to a website, on or before the due date. If the regular due date falls on a Saturday, Sunday, or legal holiday, the due date is the next business day. A business day is any day that is not a Saturday, Sunday, or legal holiday.

**Electronic recipient statements.** If you are required to furnish a written statement (Copy B or an acceptable substitute) to a recipient, then you may furnish the statement electronically instead of on paper. This includes furnishing the statement to recipients of Forms 1098, 1098-E, 1098-T, 1099-A, B, C, CAP, DIV, H, INT, G, LTC, MISC, OID, PATR, Q, R, S, SA, 5498, 5498-ESA, and 5498-SA. It also includes Form W-2G (except for horse and dog racing, jai alai, sweepstakes, wagering pools, and lotteries).

If you meet the requirements listed below, you are treated as furnishing the statement timely.

**Consent.** The recipient must consent in the affirmative and not have withdrawn the consent before the statement is furnished. The consent by the recipient must be made electronically in a way that shows that he or she can access the statement in the electronic format in which it will be furnished.

You must notify the recipient of any hardware or software changes prior to furnishing the statement. A new consent to receive the statement electronically is required after the new hardware or software is put into service.

Prior to furnishing the statements electronically, you must provide the recipient a statement with the following statements prominently displayed:

- If the recipient does not consent to receive the statement electronically, a paper copy will be provided.
- The scope and duration of the consent. For example, whether the consent applies to every year the statement is furnished or only for the January 31 immediately following the date of the consent.
- How to obtain a paper copy after giving consent.
- How to withdraw the consent. The consent may be withdrawn at any time by furnishing the withdrawal in writing (electronically or on paper) to the person whose name appears on the statement. Confirmation of the withdrawal also will be in writing (electronically or on paper).
- Notice of termination. The notice must state under what conditions the statements will no longer be furnished to the recipient.
- Procedures to update the recipient's information.

- A description of the hardware and software required to access, print and retain a statement, and a date the statement will no longer be available on the website.

**Format, posting, and notification.** Additionally, you must:

- Ensure the electronic format contains all the required information and complies with the applicable revenue procedure for substitute statements to recipients. See Pub. 1179.
- Post, on or before the January 31 due date, the applicable statement on a website accessible to the recipient through October 15 of that year.
- Inform the recipient, electronically or by mail, of the posting and how to access and print the statement.

For more information, see Regulations section 31.6051-1. For electronic furnishing of Forms 1098-E and 1098-T, see Regulations section 1.6050S-2. For electronic furnishing of Forms 1099-R, 1099-SA, 1099-Q, 5498, 5498-ESA, and 5498-SA, see Notice 2004-10, 2004-6 I.R.B. 433.

**Extension.** You may request an extension of time to provide the statements to recipients by sending a letter to IRS-Martinsburg Computing Center, Information Reporting Program, Attn: Extension of Time Coordinator, 240 Murall Drive, Kearneysville, WV 25430. The letter must include **(a)** your name, **(b)** your TIN, **(c)** your address, **(d)** type of return, **(e)** a statement that your extension request is for providing statements to recipients, **(f)** reason for delay, and **(g)** the signature of the payer or authorized agent. Your request must be postmarked by the date on which the statements are due to the recipients. If your request for an extension is approved, generally you will be granted a maximum of 30 extra days to furnish the recipient statements.

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## I. Corrected Returns on Paper Forms



To file corrections on magnetic media, see **Magnetic Media/Electronic Reporting** on page GEN-5 and Pub. 1220.

If you filed a return with the IRS and later discover you made an error on it, you must:

- Correct it as soon as possible and file Copy A and Form 1096 with your Internal Revenue Service Center (see **Where To File** on page GEN-7).
  - Furnish statements to recipients showing the correction.
- When making a correction, complete all required information (see **Filing Corrected Returns on Paper Forms** on page GEN-12).
- **Do not** cut or separate forms that are two or three to a page. Submit the entire page even if only one of the forms on the page is completed.
  - **Do not** staple the forms to Form 1096.

To correct payer information, see the instructions on page GEN-5.

**Form 1096.** Use a separate Form 1096 for each type of return you are correcting. For the same type of return, you may use one Form 1096 for both originals and corrections.

**CORRECTED checkbox.** Enter an "X" in the corrected checkbox only when correcting a form previously filed with the IRS or furnished to the recipient. When the type of error requires two returns to make the correction, see **Filing Corrected Returns on Paper Forms** on page GEN-12 to determine when to mark the "CORRECTED" checkbox.

**Account number.** If the account number was provided on the original return, the same account number must be included on both the original and corrected return to properly identify and process the correction. If the account number was not provided on the original return, do not include it on the corrected return. See **Account Number Box on Forms** on page GEN-14.

**Recipient's statement.** You may enter a date next to the "CORRECTED" checkbox. This will help the recipient in the case of multiple corrections.

**Filing corrected returns on paper forms.** The error charts on page GEN-12 give step-by-step instructions for filing corrected

## Filing Corrected Returns on Paper Forms

Identify the correction needed based on **Error Type 1 or 2**; then follow the steps to make the corrections and file the form(s). Also see **Corrected Returns on Paper Forms** on page GEN-11.

Error Type 1	Correction
<p><b>Incorrect money amount(s), code, or checkbox</b> or <b>Incorrect address,</b> or <b>A return was filed when one should not have been filed</b></p> <p>These errors require only one return to make the correction.</p> <p><b>Caution:</b> <i>If you must correct a TIN and/or a name and address, follow the instructions under Error 2.</i></p> <p><b>Note:</b> <i>For information on reporting errors to the payer's name and TIN, see page GEN-5.</i></p>	<p><b>A. Form 1098, 1099, 5498, or W-2G</b></p> <ol style="list-style-type: none"> <li>1. Prepare a new information return.</li> <li>2. Enter an "X" in the "CORRECTED" box (and date (optional)) at the top of the form.</li> <li>3. Correct any recipient information such as money amounts and address. Report other information as per original return.</li> </ol> <p><b>B. Form 1096</b></p> <ol style="list-style-type: none"> <li>1. Prepare a new transmittal Form 1096.</li> <li>2. Provide all requested information on the form as it applies to Part A, 1 and 2.</li> <li>3. File Form 1096 and Copy A of the return with the appropriate service center.</li> <li>4. Do not include a copy of the original return that was filed incorrectly.</li> </ol>

Error Type 2	Correction
<p><b>No payee TIN (SSN, EIN, QI-EIN, or ITIN)</b> or <b>Incorrect payee TIN</b> or <b>Incorrect name and address</b></p> <p><b>Original return filed using wrong type of return</b> (for example, a Form 1099-DIV was filed when a Form 1099-INT should have been filed).</p> <p>Two separate returns are required to make the correction properly. Follow all instructions for both Steps 1 and 2.</p> <p><b>Note:</b> <i>You do not have to file a corrected return for an incorrect payer TIN and/or incorrect payer name and address. (For an incorrect payer TIN and/or payer name and address, see page GEN-5.)</i></p>	<p><b>Step 1.</b> Identify incorrect return submitted.</p> <ol style="list-style-type: none"> <li>1. Prepare a new information return.</li> <li>2. Enter an "X" in the "CORRECTED" box (and date (optional)) at the top of the form.</li> <li>3. Enter the payer, recipient, and account number information exactly as it appeared on the original incorrect return; however, enter 0 (zero) for all money amounts.</li> </ol> <hr/> <p><b>Step 2.</b> Report correct information.</p> <p><b>A. Form 1098, 1099, 5498, or W-2G</b></p> <ol style="list-style-type: none"> <li>1. Prepare a new information return.</li> <li>2. Do not enter an "X" in the "CORRECTED" box at the top of the form. Prepare the new return as though it is an original.</li> <li>3. Include all the correct information on the form including the correct TIN, name, and address.</li> </ol> <p><b>B. Form 1096</b></p> <ol style="list-style-type: none"> <li>1. Prepare a new transmittal Form 1096.</li> <li>2. Enter the words "Filed To Correct TIN," "Filed to Correct Name and Address," or "File to Correct Return" in the bottom margin of the form.</li> <li>3. Provide all requested information on the form as it applies to the returns prepared in Steps 1 and 2.</li> <li>4. File Form 1096 and Copy A of the return with the appropriate service center.</li> <li>5. Do not include a copy of the original return that was filed incorrectly.</li> </ol>



returns for the most frequently made errors. They are grouped under **Error Type 1** or **2**, based on how the correction is made. Correction of errors may require the submission of more than one return. Be sure to read and follow the steps given.



*If you fail to file correct information returns or furnish a correct payee statement, you may be subject to a penalty. See **Penalties** on page GEN-4. Regulations section 301.6724-1 (relating to information return penalties) does not require you to file corrected returns for missing or incorrect TINs if you meet the reasonable cause criteria. You are merely required to include the correct TIN on the next original return you are required to file. However, if you do not meet the reasonable cause criteria, a reduced penalty may be imposed if the corrected returns are filed by August 1.*

*In addition, even if you meet the reasonable cause criteria, the IRS encourages you to file corrections for incorrect or missing TINs so that the IRS can update the payees' records.*

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## J. Void Returns

An "X" in the "VOID" box at the top of the form will not correct a previously filed return. See **Corrected Returns on Paper Forms** on GEN-12 for instructions for making corrections.

**VOID box.** If a completed or partially completed Form 1098, 1099, or 5498 is incorrect and you want to void it before submission to the IRS, enter an "X" in the "VOID" box at the top of the form. For example, if you make an error while typing or printing a form, you should void it. The return will then be disregarded during processing by the IRS. Go to the next form on the page, or to another page, and enter the correct information; but **do not** mark the "CORRECTED" box. Do not cut or separate the forms that are two or three to a page. Submit the entire page even if only one of the forms on the page is a good return.

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## K. Other Information Returns

The income information you report on the following forms must not be repeated on Forms 1099 or W-2G:

- Form W-2 reporting wages and other employee compensation.
- Forms 1042-S and 1000 reporting income to foreign persons.
- Form 2439 reporting undistributed long-term capital gains of a regulated investment company or real estate investment trust.
- Schedule K-1 of Form 1065 or 1065-B reporting distributive shares to members of a partnership.
- Schedule K-1 of Form 1041 reporting distributions to beneficiaries of trusts or estates.
- Schedule K-1 of Form 1120S reporting distributive shares to shareholders of S corporations.
- Schedule K of Form 1120-IC-DISC reporting actual and constructive distributions to shareholders and deferred DISC income.
- Schedule Q of Form 1066 reporting income from a REMIC to a residual interest holder.

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## L. Payments to Corporations and Partnerships

Generally, payments to **corporations** are not reportable. However, you must report payments to corporations for the following:

- Medical and health care payments (Form 1099-MISC),
- Withheld Federal income tax or foreign tax,
- Barter exchange transactions (Form 1099-B),
- Substitute payments in lieu of dividends and tax-exempt interest (Form 1099-MISC),
- Interest or original issue discount paid or accrued to a regular interest holder of a REMIC (Form 1099-INT or 1099-OID),
- Acquisitions or abandonments of secured property (Form 1099-A),
- Cancellation of debt (Form 1099-C),

- Payments of attorneys' fees and gross proceeds paid to attorneys (Form 1099-MISC),
- Fish purchases for cash (Form 1099-MISC), and
- Federal executive agency payments for services (Form 1099-MISC). For additional reporting requirements, see Rev. Rul. 2003-66, 2003-26 I.R.B. 1115.

Reporting generally is required for all payments to **partnerships**. For example, payments of \$600 or more made in the course of your trade or business to an architectural firm that is a partnership are reportable on Form 1099-MISC. However, see Regulations section 1.6049-4(c)(1)(ii)(A).

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## M. Earnings on any IRA, Coverdell ESA, Archer MSA, or HSA

Generally, income earned in any IRA, Coverdell ESA, Archer MSA, or HSA, such as interest or dividends, is not reported on Forms 1099. However, distributions must be reported on Form 1099-R, 1099-Q, or 1099-SA.

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## N. Certain Grantor Trusts


Certain grantor trusts may choose to file Forms 1099 rather than a separate statement attached to **Form 1041**, U.S. Income Tax Return for Estates and Trusts. If you have filed Form 1041 for a grantor trust in the past and you want to choose the Form 1099 filing method for 2004, you must have filed a **final** Form 1041 for 2003. To change reporting method, see Regulations section 1.671-4(g) and the **Instructions for Form 1041 and Schedules A, B, D, G, I, J, and K-1**.

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## O. Special Rules for Reporting Payments Made Through Foreign Intermediaries and Foreign Flow-Through Entities on Form 1099

If you are the payer and have received a **Form W-8IMY**, Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding, from a foreign intermediary or flow-through entity, follow the instructions below for completing Form 1099. Definitions of the terms used in these instructions are on page GEN-14.

### Presumption Rules

 *For additional information including details on the presumption rules, see the **Instructions for the Requester of Forms W-8BEN, W-8ECI, W-8EXP, and W-8IMY** and Pub. 515. To order, see **How To Get Forms and Publications** on page GEN-3.*

If you are the payer and do not have a Form W-9, appropriate Form W-8, or other valid documentation, or you cannot allocate a payment to a specific payee, prior to payment, you are required to use certain presumption rules to determine the following:

- The status of the payee as a U.S. or foreign person and
  - The classification of the payee as an individual, trust, estate, corporation, or partnership.
- See Regulations sections 1.1441-1(b)(3), 1.1441-5(d) and (e), 1.6045-1(g)(3)(ii), and 1.6049-5(d).

Under these presumption rules, if you must presume that the payee is a U.S. nonexempt recipient subject to backup withholding, you must report the payment on a Form 1099. However, if before filing Form 1099 with the IRS the recipient is documented as foreign, then report the payment on a Form 1042-S.

On the other hand, if you must presume that the payee is a foreign recipient and prior to filing Form 1042-S with the IRS you discover that the payee is a U.S. nonexempt recipient based on documentation, then report all payments made to that payee during the calendar year on a Form 1099.

If you use the 90-day grace period rule to presume a payee is foreign, you must file a Form 1042-S to report all payments subject to withholding during the grace period. If you later discover that the payee is a U.S. nonexempt recipient subject to backup withholding, you must file a Form 1099 for all payments made to that payee after the discovery of the payee's U.S. status.

### Rules for Payments Made to U.S. Nonexempt Recipients Through a QI, NQI, or FTE

If you are the payer making a payment through a QI, NQI, or FTE for a U.S. nonexempt recipient on whose behalf the QI, NQI, or FTE is acting, use the following rules to complete Form 1099.

**Known recipient.** If you know that a payee is a U.S. nonexempt recipient and have the payee's name, address, and TIN (if a TIN has been provided), you must complete the Form 1099 with that information. Also, on the second name line below the recipient's name enter "IMY" followed by the name of the QI, NQI, or FTE.

For payments made to multiple recipients: **(a)** enter the name of the recipient whose status you relied on to determine the applicable rate of withholding and **(b)** on the second name line, enter "IMY" followed by the name of the QI, NQI, or FTE. However, if the QI has assumed primary Form 1099 reporting or backup withholding responsibility, you are not required to issue the Form 1099 or to backup withhold. See **Qualified intermediary** below.

**Unknown recipient.** If you cannot reliably associate a payment with valid documentation and are required to presume a payee is a U.S. nonexempt recipient:

1. File a Form 1099 and enter "unknown recipient" on the first name line.
2. On the second name line, enter "IMY" followed by the name of the QI, NQI, or FTE.
3. Enter the EIN of the QI, NQI, or FTE, if applicable, in the recipient's identification number box.
4. Furnish a copy of the Form 1099 with "unknown recipient" to the QI, NQI, or FTE who is acting on the recipient's behalf.



*A payer that is required to report payments made to a U.S. nonexempt recipient account holder but does not receive the necessary allocation information cannot report those payments on a pro rata basis. Report unallocated payments using the presumption rules on page GEN-13.*

### Rules for Non-U.S. Payers

Non-U.S. payers (foreign persons that are not U.S. payers) generally have the same reporting obligations as U.S. payers. A U.S. payer is anyone who is:

- A U.S. person,
- Any U.S. governmental agency,
- A controlled foreign corporation (CFC),
- A foreign partnership that has one or more U.S. partners who, in the aggregate hold more than 50 percent of the gross income derived from the conduct of a U.S. trade or business,
- A foreign person who owns 50 percent or more of the gross income that is effectively connected with a U.S. trade or business, or
- A U.S. branch of a foreign bank or a foreign insurance company.

For more information, see Regulations section 1.6049-5(c)(5).

**Exceptions.** The following payments are **not** subject to reporting by a non-U.S. payer:

1. A foreign source reportable payment paid outside the U.S. For example, see Regulations section 1.6049-5(b)(6).
2. Gross proceeds from a sale effected outside the U.S., see Regulations section 1.6045-1(a).
3. An NQI or QI that provides another payer all the information sufficient for that payer to complete Form 1099 reporting. For example, see Regulations section 1.6049-5(b)(14). However, if an NQI or QI does not provide

sufficient information for another payer to report a payment on Form 1099, the intermediary must report the payment.

### Rules for Reporting Payments Initially Reported on Form 1042-S

If an NQI or QI receives a Form 1042-S made out to an "unknown recipient" and, the NQI or QI has actual knowledge that the payee of the income is a U.S. nonexempt recipient, it must file a Form 1099 even if the payment has been subject to withholding by another payer. The NQI or QI reports the amount withheld by the other payer on Form 1099 as Federal income tax withheld.

### Definitions

**Foreign intermediary.** A foreign intermediary is any person who is not a U.S. person and acts as a custodian, broker, nominee, or otherwise as an agent for another person, regardless of whether that other person is the beneficial owner of the amount paid, a flow-through entity, or another intermediary. The intermediary can be a qualified intermediary or a nonqualified intermediary.

**Qualified intermediary (QI).** A qualified intermediary is a person that is a party to a withholding agreement with the IRS and is:

- A foreign financial institution or a foreign clearing organization (other than a U.S. branch or U.S. office of the institution or organization),
- A foreign branch or office of a U.S. financial institution or a foreign branch or office of a U.S. clearing organization,
- A foreign corporation for purposes of presenting claims of benefits under an income tax treaty on behalf of its shareholders, or
- Any other person the IRS accepts as a qualified intermediary and who enters into a withholding agreement with the IRS.

For details on QI agreements, see Rev. Proc. 2000-12, 2000-1 C.B. 387, modified by Rev. Proc. 2003-64, Section 4A (Appendix 3), 2003-32 I.R.B. 306, further modified by Rev. Proc. 2004-21, 2004-14 I.R.B. 702.

**Nonqualified intermediary (NQI).** A nonqualified intermediary is any intermediary that is not a U.S. person and that is not a qualified intermediary.

**Foreign flow-through entity (FTE).** A flow-through entity is a foreign partnership (other than a withholding foreign partnership), a foreign simple trust or foreign grantor trust (other than a withholding foreign trust), or, for payments for which a reduced rate of withholding is claimed under an income tax treaty, any entity to the extent the entity is considered to be fiscally transparent under section 894 with respect to the payment by an interest holder's jurisdiction.

**Withholding foreign partnership or withholding foreign trust.** A withholding foreign partnership or withholding foreign trust is a foreign partnership or a foreign simple or grantor trust that has entered into a withholding agreement with the IRS in which it agrees to assume primary withholding responsibility for all payments that are made to it for its partners, beneficiaries, or owners. See Rev. Proc. 2003-64, 2003-32 I.R.B. 306, as amended by Rev. Proc. 2004-21, for procedures for entering into a withholding foreign partnership or trust agreement.

**Nonwithholding foreign partnership, simple trust, or grantor trust.** A nonwithholding foreign partnership is any foreign partnership other than a withholding foreign partnership. A nonwithholding foreign simple trust is any foreign simple trust that is not a withholding foreign trust. A nonwithholding foreign grantor trust is any foreign grantor trust that is not a withholding foreign trust.

**Fiscally transparent entity.** An entity is treated as fiscally transparent with respect to an item of income to the extent that the interest holders in the entity must, on a current basis, take into account separately their shares of an item of income paid to the entity, whether or not distributed, and must determine the character of the items of income as if they were realized directly from the sources from which they were realized by the entity. For example, partnerships, common trust funds, and simple

trusts or grantor trusts are generally considered to be fiscally transparent with respect to items of income received by them.

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## P. Account Number Box on Forms

Use the **account number** box on all Forms 1099, 1098, 5498, and W-2G for an account number designation. The account number is required if you have multiple accounts for a recipient for whom you are filing more than one information return of the same type. Additionally, the IRS encourages you to include the recipient's account number on paper forms if your system of records uses the account number rather than the name or TIN for identification purposes. Also, the IRS will include the account number in future notices to you about backup withholding. If you are filing electronically or magnetically, see Pub. 1220.

The account number may be a checking account number, savings account number, serial number, or any other number you assign to the payee that is unique and will distinguish the specific account. This number must not appear anywhere else on the form, and this box may not be used for any other item unless the separate instructions indicate otherwise. Using unique account numbers ensures that corrected information returns will be processed accurately.

If you are using window envelopes to mail statements to recipients, and if you are using reduced rate mail, be sure the account number does not appear in the window because the Postal Service may not accept these for reduced rate mail.

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**Privacy Act and Paperwork Reduction Act Notice.** We ask for the information on these forms to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to figure and collect the right amount of tax.

Sections 220(h), 223, 408, 408A, 529, 530, 6041, 6041A, 6042, 6043, 6044, 6045, 6047, 6049, 6050A, 6050B, 6050D, 6050E, 6050H, 6050J, 6050N, 6050P, 6050Q, 6050R, 6050S, 6050T, and their regulations require you to file an information return with the IRS and furnish a statement to recipients. Section 6109 and its regulations require you to provide your taxpayer identification number on what you file.

Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation, and to cities, states, and the District of Columbia for use in administering their tax laws. We may also disclose this information to other countries under a tax treaty, and to Federal and state agencies to enforce Federal nontax criminal laws and to combat terrorism. The authority to disclose information to

combat terrorism expired on December 31, 2003. Legislation is pending that would reinstate this authority. If you fail to provide this information in a timely manner, you may be subject to penalties.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file the following forms will vary depending on individual circumstances. The estimated average times are:

1096 . . . . .	13 minutes
1098 . . . . .	7 minutes
1098-E . . . . .	7 minutes
1098-T . . . . .	13 minutes
1099-A . . . . .	9 minutes
1099-B . . . . .	20 minutes
1099-C . . . . .	10 minutes
1099-CAP . . . . .	11 minutes
1099-DIV . . . . .	18 minutes
1099-G . . . . .	11 minutes
1099-H . . . . .	18 minutes
1099-INT . . . . .	13 minutes
1099-LTC . . . . .	13 minutes
1099-MISC . . . . .	16 minutes
1099-OID . . . . .	12 minutes
1099-PATR . . . . .	15 minutes
1099-Q . . . . .	11 minutes
1099-R . . . . .	18 minutes
1099-S . . . . .	8 minutes
1099-SA . . . . .	8 minutes
5498 . . . . .	12 minutes
5498-ESA . . . . .	7 minutes
5498-SA . . . . .	10 minutes
W-2G . . . . .	18 minutes

If you have comments concerning the accuracy of these time estimates or suggestions for making these forms simpler, we would be happy to hear from you. You can write to the Tax Products Coordinating Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001. **Do not** send these forms to this address. Instead, see **Where To File** on page GEN-7.

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# Guide to Information Returns

(If any date shown falls on a Saturday, Sunday, or legal holiday, the due date is the next business day.)

Form	Title	What To Report	Amounts To Report	Due Date	
				To IRS	To Recipient (unless indicated otherwise)
1042-S	Foreign Person's U.S. Source Income Subject to Withholding	Payments subject to withholding under Chapter 3 of the Code, including interest, dividends, royalties, pensions and annuities, gambling winnings, and compensation for personal services.	All amounts, except \$10 or more for interest on U.S. deposits paid to Canadian nonresident aliens	March 15	March 15
1098	Mortgage Interest Statement	Mortgage interest (including points) you received in the course of your trade or business from individuals and reimbursements of overpaid interest.	\$600 or more	February 28 *	(To Payer/ Borrower) January 31
1098-E	Student Loan Interest Statement	Student loan interest received in the course of your trade or business.	\$600 or more	February 28 *	January 31
1098-T	Tuition Statement	Qualified tuition and related expenses, reimbursements or refunds, and scholarships or grants (optional).	See instructions	February 28 *	January 31
1099-A	Acquisition or Abandonment of Secured Property	Information about the acquisition or abandonment of property that is security for a debt for which you are the lender.	All amounts	February 28 *	(To Borrower) January 31
1099-B	Proceeds From Broker and Barter Exchange Transactions	Sales or redemptions of securities, futures transactions, commodities, and barter exchange transactions.	All amounts	February 28 *	January 31
1099-C	Cancellation of Debt	Cancellation of a debt owed to a financial institution, the Federal Government, a credit union, RTC, FDIC, NCUA, a military department, the U.S. Postal Service, the Postal Rate Commission, or any organization having a significant trade or business of lending money.	\$600 or more	February 28 *	January 31
1099-CAP	Changes in Corporate Control and Capital Structure	Information about cash, stock, or other property from an acquisition of control or the substantial change in capital structure of a corporation.	Amounts of stock or property valued at \$100 million or more	February 28 *	(To Shareholders) January 31
1099-DIV	Dividends and Distributions	Distributions, such as dividends, capital gain distributions, or nontaxable distributions, that were paid on stock, and liquidation distributions.	\$10 or more, except \$600 or more for liquidations	February 28 *	January 31
1099-G	Certain Government Payments	Unemployment compensation, state and local income tax refunds, agricultural payments, and taxable grants.	\$10 or more for refunds and unemployment; \$600 or more for all others	February 28 *	January 31
1099-H	Health Insurance Advance Payments	Health insurance premiums paid on behalf of certain individuals.	All amounts	February 28 *	January 31
1099-INT	Interest Income	Interest income.	\$10 or more (\$600 or more in some cases)	February 28 *	January 31
1099-LTC	Long-Term Care and Accelerated Death Benefits	Payments under a long-term care insurance contract and accelerated death benefits paid under a life insurance contract or by a viatical settlement provider.	All amounts	February 28 *	(To Insured and Policyholder) January 31
1099-MISC	Miscellaneous Income  (Also, use this form to report the occurrence of direct sales of \$5,000 or more of consumer goods for resale.)	Rent or royalty payments; prizes and awards that are not for services, such as winnings on TV or radio shows.	\$600 or more, except \$10 or more for royalties	February 28 *	January 31
		Payments to crew members by owners or operators of fishing boats including payments of proceeds from sale of catch.	All amounts		
		Payments to a physician, physicians' corporation, or other supplier of health and medical services. Issued mainly by medical assistance programs or health and accident insurance plans.	\$600 or more		
		Payments for services performed for a trade or business by people not treated as its employees. Examples: fees to subcontractors or directors, and golden parachute payments.	\$600 or more		
		Fish purchases paid in cash for resale.	\$600 or more		
		Substitute dividend and tax-exempt interest payments reportable by brokers.	\$10 or more		
		Crop insurance proceeds.	\$600 or more		
		Gross proceeds paid to attorneys.	All amounts		
1099-OID	Original Issue Discount	Original issue discount.	\$10 or more	February 28 *	January 31
1099-PATR	Taxable Distributions Received From Cooperatives	Distributions from cooperatives to their patrons.	\$10 or more	February 28 *	January 31

\*The due date is March 31 if filed electronically.

## Guide to Information Returns *(Continued)*

Form	Title	What To Report	Amounts To Report	Due Date	
				To IRS	To Recipient (unless indicated otherwise)
1099-Q	Payments From Qualified Education Programs (Under Sections 529 and 530)	Earnings from a qualified tuition program and Coverdell ESAs.	All amounts	February 28*	January 31
1099-R	Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.	Distributions from retirement or profit-sharing plans, any IRA, insurance contracts, and IRA recharacterizations.	\$10 or more	February 28*	January 31
1099-S	Proceeds From Real Estate Transactions	Gross proceeds from the sale or exchange of real estate.	Generally, \$600 or more	February 28*	January 31
1099-SA	Distributions From an HSA, Archer MSA, or Medicare+Choice MSA	Distributions from an HSA, Archer MSA, or Medicare+Choice MSA.	All amounts	February 28*	January 31
4789	Currency Transaction Report	Each deposit, withdrawal, exchange of currency, or other payment or transfer by, through, or to financial institutions (other than casinos).	Over \$10,000	15 days after date of transaction	Not required
5471	Information Return of U.S. Persons With Respect To Certain Foreign Corporations	U.S. persons who are officers, directors, or shareholders in certain foreign corporations report information required by sections 6035, 6038, and 6046, and to compute income from controlled foreign corporations under sections 951-964.	See form instructions	Due date of income tax return	None
5472	Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business	Transactions between a 25% foreign-owned domestic corporation or a foreign corporation engaged in a trade or business in the United States and a related party as required by sections 6038A and 6038C.	See form instructions	Due date of income tax return	None
5498	IRA Contribution Information	Contributions (including rollover contributions) to any individual retirement arrangement (IRA) including a SEP, SIMPLE, and Roth IRA; Roth conversions; IRA recharacterizations; and the fair market value (FMV) of the account.	All amounts	May 31	(To Participant) For FMV/RMD Jan.31; For contributions, May 31
5498-ESA	Coverdell ESA Contribution Information	Contributions (including rollover contributions) to a Coverdell ESA.	All amounts	May 31	April 30
5498-SA	HSA, Archer MSA, or Medicare+Choice MSA Information	Contributions to an HSA, Archer MSA and the fair market value of an HSA, Archer MSA, or Medicare+Choice MSA.	All amounts	May 31	(To Participant) May 31
8027	Employer's Annual Information Return of Tip Income and Allocated Tips	Receipts from large food or beverage operations, tips reported by employees, and allocated tips.	See separate instructions	Last day of February*	Allocated tips are shown on Form W-2, due January 31
8300 (IRS/FinCEN form)	Report of Cash Payments Over \$10,000 Received in a Trade or Business	Payments in cash (including certain monetary instruments) or foreign currency received in one transaction, or two or more related transactions, in the course of a trade or business. Does not apply to banks and financial institutions filing Form 4789, and casinos that are required to report such transactions on Form 8362, Currency Transaction Report by Casinos, or, generally, to transactions outside the United States.	Over \$10,000	15 days after date of transaction	(To Payer) January 31
8308	Report of a Sale or Exchange of Certain Partnership Interests	Sale or exchange of a partnership interest involving unrealized receivables or inventory items.	(Transaction only)	Generally, attach to Form 1065 or 1065-B	(To Transferor and Transferee) January 31
W-2G	Certain Gambling Winnings	Gambling winnings from horse racing, dog racing, jai alai, lotteries, keno, bingo, slot machines, sweepstakes, wagering pools, etc.	Generally, \$600 or more; \$1,200 or more from bingo or slot machines; \$1,500 or more from keno	February 28*	January 31
926	Return by a U.S. Transferor of Property to a Foreign Corporation	Transfers of property to a foreign corporation and to report information under section 6038B.	See form instructions	Attach to tax return	None
W-2	Wage and Tax Statement	Wages, tips, other compensation; social security, Medicare, withheld income taxes; and advance earned income credit (EIC) payments. Include bonuses, vacation allowances, severance pay, certain moving expense payments, some kinds of travel allowances, and third-party payments of sick pay.	See separate instructions	To SSA Last day of February*	To Recipient January 31
TD F 90-22.1	Report of Foreign Bank and Financial Accounts	Financial interest in or signature or other authority over a foreign bank account, securities account, or other financial account.	Over \$10,000	To Treasury Dept. June 30	To Recipient None

\*The due date is March 31 if filed electronically.

## Types of Payments

Below is an alphabetical list of some payments and the forms to file and report them. However, it is not a complete list of all payments, and the absence of a payment from the list does not indicate that the payment is not reportable. For information on a specific type of payment, see the separate instructions for the form(s) listed.

Type of Payment	Report on Form	Type of Payment	Report on Form
Abandonment	1099-A	Health insurance advance payments	1099-H
Accelerated death benefits	1099-LTC	Health savings accounts:	
Acquisition of control	1099-CAP	Contributions	5498-SA
Advance earned income credit	W-2	Distributions	1099-SA
Advance health insurance payments	1099-H	Income tax refunds, state and local	1099-G
Agriculture payments	1099-G	Indian gaming profits paid to tribal members	1099-MISC
Allocated tips	W-2	Interest income	1099-INT
Annuities	1099-R	Interest, mortgage	1098
Archer MSAs:		IRA contributions	5498
Contributions	5498-SA	IRA distributions	1099-R
Distributions	1099-SA	Life insurance contract distributions	1099-R, 1099-LTC
Attorneys, fees and gross proceeds	1099-MISC	Liquidation, distributions in	1099-DIV
Auto reimbursements:		Loans, distribution from pension plan	1099-R
Employee	W-2	Long-term care benefits	1099-LTC
Nonemployee	1099-MISC	Medicare+Choice MSAs (Medicare Advantage):	
Awards:		Contributions	5498-SA
Employee	W-2	Distributions	1099-SA
Nonemployee	1099-MISC	Medical services	1099-MISC
Barter exchange income	1099-B	Mileage:	
Bonuses:		Employee	W-2
Employee	W-2	Nonemployee	1099-MISC
Nonemployee	1099-MISC	Military retirement	1099-R
Broker transactions	1099-B	Mortgage interest	1098
Cancellation of debt	1099-C	Moving expense	W-2
Capital gain distributions	1099-DIV	Nonemployee compensation	1099-MISC
Car expense:		Nonqualified plan distribution	W-2
Employee	W-2	Beneficiaries	1099-R
Nonemployee	1099-MISC	Original issue discount (OID)	1099-OID
Changes in capital structure	1099-CAP	Patronage dividends	1099-PATR
Charitable gift annuities	1099-R	Pensions	1099-R
Commissions:		Points	1098
Employee	W-2	Prizes:	
Nonemployee	1099-MISC	Employee	W-2
Commodities transactions	1099-B	Nonemployee	1099-MISC
Compensation:		Profit-sharing plan	1099-R
Employee	W-2	Punitive damages	1099-MISC
Nonemployee	1099-MISC	Qualified plan distributions	1099-R
Cost of current life insurance protection	1099-R	Qualified tuition program payments	1099-Q
Coverdell ESA contributions	5498-ESA	Real estate transactions	1099-S
Coverdell ESA distributions	1099-Q	Recharacterized IRA contributions	1099-R, 5498
Crop insurance proceeds	1099-MISC	Refunds, state and local tax	1099-G
Damages	1099-MISC	Rents	1099-MISC
Death benefits	1099-R	Retirement	1099-R
Accelerated	1099-LTC	Roth conversion IRA contributions	5498
Debt cancellation	1099-C	Roth conversion IRA distributions	1099-R
Dependent care payments	W-2	Roth IRA contributions	5498
Direct rollovers	1099-Q, 1099-R, 5498	Roth IRA distributions	1099-R
Direct sales of consumer products for resale	1099-MISC	Royalties	1099-MISC
Directors' fees	1099-MISC	Timber, pay-as-cut contract	1099-S
Discharge of indebtedness	1099-C	Sales:	
Dividends	1099-DIV	Real estate	1099-S
Education loan interest	1098-E	Securities	1099-B
Employee business expense reimbursement	W-2	Section 1035 exchange	1099-R
Employee compensation	W-2	SEP contributions	W-2, 5498
Excess deferrals, excess contributions, distributions of	1099-R	SEP distributions	1099-R
Fees:		Severance pay	W-2
Employee	W-2	Sick pay	W-2
Nonemployee	1099-MISC	SIMPLE contributions	W-2, 5498
Fishing boat crew members proceeds	1099-MISC	SIMPLE distributions	1099-R
Fish purchases for cash	1099-MISC	Student loan interest	1098-E
Foreclosures	1099-A	Substitute payments in lieu of dividends or tax-exempt interest	1099-MISC
Foreign persons' income	1042-S	Supplemental unemployment	W-2
401(k) contributions	W-2	Tax refunds, state and local	1099-G
404(k) dividend	1099-DIV	Tips	W-2
Gambling winnings	W-2G	Tuition	1098-T
Golden parachute:		Unemployment benefits	1099-G
Employee	W-2	Vacation allowance:	
Nonemployee	1099-MISC	Employee	W-2
Grants, taxable	1099-G	Nonemployee	1099-MISC
Health care services	1099-MISC	Wages	W-2



# Instructions for Form 1098

Section references are to the Internal Revenue Code unless otherwise noted.

## Items To Note

In addition to these specific instructions, you should also use the **2004 General Instructions for Forms 1099, 1098, 5498, and W-2G**. Those general instructions include information about:

- Backup withholding
- Magnetic media and electronic reporting requirements
- Penalties
- Who must file (nominee/middleman)
- When and where to file
- Taxpayer identification numbers
- Statements to recipients
- Corrected and void returns
- Other general topics

You can get the general instructions from the IRS website at [www.irs.gov](http://www.irs.gov) or by calling 1-800-TAX-FORM (1-800-829-3676).

**Rule of 78s method of accounting.** The discussion on the Rule of 78s has been removed from these instructions. If loans that were issued before 1999 were extended, you may continue to use this method of calculating interest received. For more information on the Rule of 78s, see Regulations section 1.6050H-2(c) and section 5.04 of the Appendix in Revenue Procedure 2002-9, 2002-1 C.B. 327 (and its successor).

## Specific Instructions for Form 1098

Use **Form 1098**, Mortgage Interest Statement, to report mortgage interest (including points, defined later) of \$600 or more received by you during the year in the course of your trade or business from an individual, including a sole proprietor. Report only interest on a mortgage defined below.

The \$600 threshold applies separately to each mortgage; thus, file a separate Form 1098 for each mortgage. You may, at your option, file Form 1098 to report mortgage interest of less than \$600, but you are subject to the rules in these instructions.

If an overpayment of interest on an adjustable rate mortgage (ARM) or other mortgage was made in a prior year and you refund (or credit) such overpayment, you may have to file Form 1098 to report the refund (or credit) of the overpayment. See **Reimbursement of Overpaid Interest** on page 1098-3.

## Exceptions

You need not file Form 1098 for interest received from a corporation, partnership, trust, estate, association, or company (other than a sole proprietor) even if an individual is a coborrower and all the trustees, beneficiaries, partners, members, or shareholders of the payer of record are individuals.

## Mortgage Defined

A mortgage is any obligation secured by real property. Use the table below to determine which obligations are mortgages.

Real property is land and generally anything built on it, growing on it, or attached to the land. Among other things, real property includes a manufactured home or mobile home with a minimum living space of 400 square feet and a minimum width of more than 102 inches and which is of a kind customarily used at a fixed location. See section 25(e)(10).

If property that secures the loan is not real property, you are not required to file Form 1098. However, the borrower may be entitled to a deduction for qualified residence interest, such as may be the case for a boat, which has sleeping space and cooking and toilet facilities, that the borrower uses as a home.

**Lines of credit and credit card obligations.** Interest (other than points) received on any mortgage that is in the form of a line of credit or credit card obligation is reportable regardless of how you classified the obligation. A borrower incurs a line of credit or credit card obligation when the borrower first has the right to borrow against the line of credit or credit card, whether or not the borrower actually borrows an amount at that time.

## Who Must File

File this form if you are engaged in a trade or business and, in the course of such trade or business, you receive from an individual \$600 or more of mortgage interest on any one mortgage during the calendar year. You are not required to file this form if the interest is not received in the course of your trade or business. For example, you hold the mortgage on your former personal residence. The buyer makes mortgage payments to you. You are not required to file Form 1098.

For information about who must file to report points, see **Points** on page 1098-2.

IF an obligation is...	THEN...
Incurred after 1987	It is a mortgage if real property that is located inside or outside the United States secures all or part of the obligation. <sup>1</sup>
Incurred after 1984 but before 1988	It is a mortgage only if secured primarily by real property.
In existence on December 31, 1984	It is <b>not</b> a mortgage if, at the time the obligation was incurred, the interest recipient reasonably classified the obligation as other than a mortgage, real property loan, real estate loan, or other similar type of obligation. <sup>2</sup>

<sup>1</sup> This applies even though the interest recipient classifies the obligation as other than a mortgage, for example, as a commercial loan.

<sup>2</sup> For example, if an obligation incurred in 1983 was secured by real property, but the interest recipient reasonably classified the obligation as a commercial loan because the proceeds were used to finance the borrower's business, the obligation is not considered a mortgage and reporting is **not** required. However, it is not reasonable to classify those obligations as other than mortgages for reporting purposes if over half the obligations in a class established by the interest recipient are primarily secured by real property.

**Not in the lending business.** If you receive \$600 or more of mortgage interest in the course of your trade or business, you are subject to the requirement to file Form 1098, even if you are not in the business of lending money. For example, if you are a real estate developer and you provide financing to an individual to buy a home in your subdivision, and that home is security for the financing, you are subject to this reporting requirement. However, if you are a physician not engaged in any other business and you lend money to an individual to buy your home, you are not subject to this reporting requirement because you did not receive the interest in the course of your trade or business as a physician.

**Governmental unit.** A governmental unit (or any subsidiary agency) receiving mortgage interest from an individual of \$600 or more must file this form.

**Cooperative housing corporation.** A cooperative housing corporation is an interest recipient and must file Form 1098 to report an amount received from its tenant-stockholders that represents the tenant-stockholders' proportionate share of interest described in section 216(a)(2). This rule applies only to tenant-stockholders who are individuals and from whom the cooperative has received at least \$600 of interest during the year (see the **TIP** under **Box 1** on page 1098-4).

**Collection agents.** Generally, if you receive reportable interest payments (other than points) on behalf of someone else and you are the first person to receive the interest, such as a servicing bank collecting payments for a lender, **you** must file this form. Enter your name, address, taxpayer identification number (TIN), and telephone number in the recipient entity area. You must file this form even though you do not include the interest received in your income but you merely transfer it to another person. If you wish, you may enter the name of the person for whom you collected the interest in box 4. The person for whom you collected the interest need not file Form 1098.

However, there is an exception to this rule for any period that **(a)** the first person to receive or collect the interest does not have the information needed to report on Form 1098 and **(b)** the person for whom the interest is received or collected would receive the interest in its trade or business if the interest were paid directly to such person. If **(a)** and **(b)** apply, the person on whose behalf the interest is received or collected is required to report on Form 1098. If interest is received or collected on behalf of another person other than an individual, such person is presumed to receive the interest in a trade or business.

**Foreign interest recipient.** If you are not a U.S. person, you must file Form 1098 if the interest is received in the United States. A U.S. person is a citizen or resident of the United States, a domestic partnership or corporation, or a nonforeign estate or trust. If the interest is received outside the United States, you must file Form 1098 if **(a)** you are a controlled foreign corporation or **(b)** at least 50% of your gross income from all sources for the 3-year period ending with the close of the tax year preceding the receipt of interest (or for such part of the period as you were in existence) was effectively connected with the conduct of a trade or business in the United States.

**Designation agreement.** An interest recipient, including a recipient of points, can designate a qualified person to file Form 1098 and to provide a statement to the payer of record.

A **qualified person** is either **(a)** a trade or business in which the interest recipient is under common control as specified in Regulations section 1.414(c)-2 or **(b)** a designee, named by the lender of record or by a qualified person, who either was involved in the original loan transaction or is a subsequent purchaser of the loan.

A **lender of record** is the person who, at the time the loan is made, is named as the lender on the loan documents and whose right to receive payment from the payer of record is secured by the payer of record's principal residence. Even if the lender of record intends to sell or otherwise transfer the loan to a third party after the close of the transaction, such intention does not change who is the lender of record.

The agreement must be in writing, identify the mortgage(s) and calendar years for which the qualified person must report,

and be signed by the designator and the designee. A designee may report points on Form 1098 (as having been paid directly by the payer of record) only if the designation agreement contains the designator's representation that it did not lend such amount to the payer of record as part of the overall transaction. The agreement need not be filed with the IRS, but the designator must keep a copy of it for 4 years after the close of the year in which the loan is made.

A designated qualified person is subject to any applicable penalties as if it were the interest recipient. Thus, a designator is relieved from liability for any applicable penalties.

### Nonresident Alien Interest Payer

You must file Form 1098 to report interest paid by a nonresident alien only if all or part of the security for the mortgage is real property located in the United States.

Report the interest based on the following:

- If the interest is paid within the United States, you must request from the payer the applicable Form W-8 (withholding certificate) as described in Regulations section 1.1441-1(e)(1).
- If the interest is paid outside the United States, you must satisfy the documentary evidence standard described in Regulations section 1.6049-5(c).

### Payer of Record

The payer of record is the individual carried on your books and records as the principal borrower. If your books and records do not indicate which borrower is the principal borrower, you must designate one.

If you permit a subsequent purchaser of the property to assume the loan without releasing the first purchaser from personal liability, the subsequent purchaser is the payer of record. Such subsequent purchaser's name, address, and TIN must appear on Form 1098.

**Multiple borrowers.** Even though there may be more than one borrower on the mortgage, you are required to prepare Form 1098 only for the **payer of record**, and only if such payer of record is an individual, showing the total interest received on the mortgage. Even if an individual is a coborrower, no Form 1098 is required unless the payer of record is also an individual.

### Payments by Third Party

Report all interest received on the mortgage as received from the borrower, except as explained under **Seller Payments** below. For example, if the borrower's mother makes payments on the mortgage, the interest received from the mother is reportable on Form 1098 as received from the borrower.

However, do not report mortgage interest received from any governmental unit (or any subsidiary agency). For example, do not report any interest received as housing assistance payments from the Department of Housing and Urban Development (HUD) on mortgages insured under section 235 of the National Housing Act.

### Seller Payments

**Do not** report in box 1 of Form 1098 any interest paid by a seller on a purchaser's/borrower's mortgage, such as on a "buy-down" mortgage. For example, if a real estate developer deposits an amount in escrow and tells you to draw on that escrow account to pay interest on the borrower's mortgage, do not report in box 1 the interest received from that escrow account. Also, do not report in box 1 any lump sum paid by a real estate developer to pay interest on a purchaser's/borrower's mortgage. However, if you wish, you may use box 4 to report to the payer of record any interest paid by the seller. See **Points** below for information about reporting seller-paid points in box 2.

### Points

You must report certain points paid for the purchase of the payer of record's principal residence on Form 1098. You must report points if the points, plus other interest on the mortgage, are \$600 or more. For example, if a borrower pays points of \$300 and other mortgage interest of \$300, the lender has received \$600 of mortgage interest and must file Form 1098.

Report the total points on Form 1098 for the year of closing regardless of the accounting method you use to report the points as income for Federal income tax purposes.

**Who must report points.** The lender of record or a qualified person must file Form 1098 to report all points paid by the payer of record in connection with the purchase of the principal residence. If a designation agreement is in effect for a mortgage, only the person designated in the agreement must file Form 1098 to report all points on that mortgage. See **Designation agreement** above.

Amounts received directly or indirectly by a mortgage broker are treated as points to the same extent they would be treated as points if paid to and retained by the lender of record. The lender of record must report those points paid to a mortgage broker.

**Reportable points.** Report on Form 1098 points that meet all the following conditions:

1. They are clearly **designated on the Uniform Settlement Statement** (Form HUD-1) as points; for example, "loan origination fee" (including amounts for VA and FHA loans), "loan discount," "discount points," or "points."

2. They are **computed as a percentage of the stated principal loan amount.**

3. They are **charged under an established business practice** of charging points in the area where the loan was issued and do not exceed the amount generally charged in that area.

4. They are **paid for the acquisition of the payer of record's principal residence**, and the loan is secured by that residence. You may rely on a signed written statement from the payer of record that states that the proceeds of the loan are for the purchase of the payer of record's principal residence.

5. They are **paid directly by the payer of record.** Points are paid directly if either **a** or **b** below apply:

a. The **payer** of record provides funds that were not borrowed from the lender of record for this purpose as part of the overall transaction. The funds may include down payments, escrow deposits, earnest money applied at closing, and other funds actually paid over by the payer of record at or before closing.

b. The **seller** pays points on behalf of the payer of record. Points paid by the seller to the interest recipient on behalf of the payer of record are treated as paid to the payer of record and then paid directly by the payer of record to the interest recipient.

Report points paid under **5a** and **5b** on the payer of record's Form 1098 in box 2.

**Exceptions.** Do not report as points on Form 1098 amounts paid:

- For loans to improve a principal residence;
- For loans to purchase or improve a residence that is not the payer of record's principal residence, such as a second home, vacation, investment, or trade or business property even though the borrower may be entitled to amortize points paid for the purchase of a second home, vacation home, etc. and deduct them over the life of the loan;
- For a home equity or line of credit loan, even if secured by the principal residence;
- For a refinancing (but see **Construction loans** below), including a loan to refinance a debt owed by the borrower under a land contract, a contract for deed, or similar forms of seller financing;
- In lieu of items ordinarily stated separately on the Form HUD-1, such as appraisal fees, inspection fees, title fees, attorney fees, and property taxes; and
- To acquire a principal residence to the extent the points are allocable to an amount of principal in excess of \$1 million.

**Construction loans.** Amounts paid on a loan to construct a residence (construction loan) or to refinance a loan incurred to construct a residence are reportable on Form 1098 as points if they:

- Are clearly designated on the loan documents as points incurred in connection with the loan, such as loan origination fees, loan discount, discount points, or points;
- Are computed as a percentage of the stated principal loan amount;
- Conform to an established business practice of charging points in the area where the loan is issued and do not exceed the amount generally charged in the area;
- Are paid in connection with a loan incurred by the payer of record to construct (or refinance construction of) a residence that is to be used, when completed, as the principal residence of the payer of record;
- Are paid directly by the payer of record; and
- Are not allocable to an amount of principal in excess of \$1 million.

Amounts paid to refinance a loan to construct a residence are not points to the extent they are allocable to debt that exceeds the debt incurred to construct the residence.

## Prepaid Interest

Report prepaid interest (other than points) only in the year in which it properly accrues.

**Example.** Interest received on December 20, 2004, that accrues by December 31 but is not due until January 31, 2005, is reportable on the 2004 Form 1098.

**Exception.** Interest received during the current year that will properly accrue in full by January 15 of the following year may be considered received in the current year, at your option, and is reportable on Form 1098 for the current year. However, if any part of an interest payment accrues after January 15, then only the amount that properly accrues by December 31 of the current year is reportable on Form 1098 for the current year. For example, if you receive a payment of interest that accrues for the period December 20 through January 20, you cannot report any of the interest that accrues after December 31 for the current year. You must report the interest that accrues after December 31 on Form 1098 for the following year.

## Reimbursement of Overpaid Interest

You are required to report reimbursements of overpaid interest aggregating \$600 or more to a payer of record on Form 1098. You are not required to report reimbursements of overpaid interest aggregating less than \$600 unless you are otherwise required to file Form 1098. That is, if you did not receive at least \$600 of mortgage interest during the year of reimbursement from the person to whom you made the reimbursement, you are not required to file Form 1098 merely to report a reimbursement of less than \$600. However, you may report any reimbursement of overpaid interest that you are not otherwise required to report, but you are subject to the rules in these instructions.

The reimbursement must be reported on Form 1098 for the year in which the reimbursement is made. No change should be made to the prior year Form 1098 because of this reimbursement. Report the total reimbursement even if it is for overpayments made in more than 1 year.

To be reportable, the reimbursement must be a refund or credit of mortgage interest received in a prior year that was required to be reported for that prior year by any interest recipient on Form 1098. Only the person who makes the reimbursement is required to report it on Form 1098. For example, if you bought a mortgage on which interest was overpaid in a prior year, you made a reimbursement of the overpaid interest, and the previous mortgage holder was required to report mortgage interest on Form 1098 in the prior year, you must file Form 1098 to report the reimbursement because you are the one making the reimbursement.

**Example.** In 2002, you received \$5,000 of mortgage interest from the payer/borrower and reported that amount on Form 1098 for 2002. In 2004, you determined that interest due on the mortgage for 2002 was \$4,500, and the payer/borrower had overpaid \$500. You refunded the \$500 overpayment to the payer/borrower in 2004. If you received \$600 or more of interest on the mortgage from the payer/borrower in 2004, you must report the \$500 refund in box 3 of the 2004 Form 1098. No



change to the 2002 Form 1098 is required. If, instead of refunding the \$500 overpayment, you credited the payer/borrower's 2004 mortgage interest payments due, \$500 is still shown in box 3, and the interest received from the payer/borrower in 2004 shown in box 1 must include the \$500 credit.

**Overpayment and reimbursement in same year.** If you reimburse interest in the same year it is overpaid, do not report the overpayment on Form 1098 as interest received during the year or as a reimbursement of overpaid interest. For example, if the borrower paid \$5,000 and you reimbursed \$500 of that amount in 2004, enter \$4,500 in box 1 as interest paid by the borrower. Do not enter the \$500 reimbursement in box 3.

**Interest on reimbursement.** A financial institution (or its middleman) that pays interest of \$10 or more on the reimbursement must report that interest (under section 6049) on **Form 1099-INT**, Interest Income. Others that pay interest of \$600 or more on the reimbursement must report that interest (under section 6041) on Form 1099-INT. Do not include such interest on Form 1098.

### Statements to Payers of Record

If you are required to file Form 1098, you must provide a statement to the payer of record. For more information about the requirement to furnish a statement to the payer of record, see part **H** in the **2004 General Instructions for Forms 1099, 1098, 5498, and W-2G**.

### Recipient's/Lender's Name and Address Box

Enter the name and address of the filer of Form 1098. Use this same name and address on Form 1096.

### Payer's/Borrower's Name and Address Box

Enter the name and address of the person who paid the interest (payer of record).



*Be careful to enter the recipient's and payer's information in the proper boxes.*

### Box 1. Mortgage Interest Received From Payer(s)/Borrower(s)

Enter the **interest** (not including points) received on the mortgage from borrowers during the calendar year. Include

interest on a mortgage, a home equity loan, or a line of credit or credit card loan secured by real property. Do not include government subsidy payments, seller payments, or prepaid interest that does not meet the exception explained under **Prepaid Interest** on page 1098-3. Interest includes prepayment penalties and late charges unless the late charges are for a specific mortgage service.



*A cooperative housing corporation that receives any cash part of a patronage dividend from the National Consumer Cooperative Bank must reduce the interest to be reported on each tenant-stockholder's Form 1098 by a proportionate amount of the cash payment in the year the cooperative receives the cash payment. See Rev. Proc. 94-40, 1994-1 C.B. 711.*

### Box 2. Points Paid on Purchase of Principal Residence

Enter **points** paid on the purchase of the payer of record's principal residence. For an explanation of reportable points, see **Points** on page 1098-2.

### Box 3. Refund of Overpaid Interest

Enter the total refund or credit of a prior year(s) overpayment of interest. See **Reimbursement of Overpaid Interest** on page 1098-3.

### Box 4. Blank Box

Enter any other item you wish to report to the payer, such as the address of the property that secures the debt, real estate taxes, insurance, or if you are a collection agent, the name of the person for whom you collected the interest. This box is optional and is provided only for your convenience. You do not have to report to the IRS any information provided in this box.

# Instructions for Forms 1098-E and 1098-T

Section references are to the Internal Revenue Code unless otherwise noted.

## What's New for 2004

### Form 1098-E

For loans made on or after September 1, 2004, loan origination fees and capitalized interest must be included in the amount reported in box 1.

### Form 1098-T

**Information contact.** The telephone number provided by the institution must be for the information contact at the institution, not the institution's general telephone number.

## Items To Note

**General instructions.** In addition to these specific instructions, you should also use the **2004 General Instructions for Forms 1099, 1098, 5498, and W-2G**. Those general instructions include information about:

- Magnetic media and electronic reporting requirements
- Penalties
- Who must file (nominee/middleman)
- When and where to file
- Taxpayer identification numbers
- Statements to recipients
- Corrected and void returns
- Other general topics

You can get the general instructions from the IRS website at [www.irs.gov](http://www.irs.gov) or by calling 1-800-TAX-FORM (1-800-829-3676).

**Form W-9S.** You may use **Form W-9S**, Request for Student's or Borrower's Taxpayer Identification Number and Certification, to obtain the student's or borrower's name, address, social security number, and student loan certification to be used when filing Form 1098-E or 1098-T. Use of Form W-9S is optional; you may collect the information using your own forms, such as financial aid applications, and procedures. You may collect the student's or borrower's information on paper or electronically.

**Electronic submission of Form W-9S.** An educational institution, insurer, or lender may establish a system for students and borrowers to submit Form W-9S electronically, including by fax. Generally, the electronic system must:

1. Ensure the information received is the information sent and document all occasions of user access that result in the submission.
2. Make reasonably certain the person accessing the system and submitting the form is the person identified on Form W-9S.
3. Provide you with the same information as the paper Form W-9S.
4. Be able to supply a hard copy of the electronic Form W-9S if the Internal Revenue Service requests it.

Also, if an electronic Form W-9S is used to obtain the borrower's certification that all the loan proceeds are solely used to pay qualified higher education expenses, your electronic system must require, as the final entry in the submission, an electronic signature by the borrower whose name is on Form W-9S. The signature authenticates and verifies the submission. See Announcement 98-27, 1998-1 C.B. 865.

**Magnetic media/electronic reporting.** For Forms 1098-E and 1098-T, you are required to file magnetically or electronically if filing 250 or more returns. See **Magnetic Media/Electronic Reporting** in the 2004 General Instructions for Forms 1099, 1098, 5498, and W-2G for more information.

**Penalties.** For Forms 1098-E and 1098-T, penalties may be imposed for failure to file or failure to furnish correct forms. However, under certain circumstances, the penalties may be waived. See the 2004 General Instructions for Forms 1099, 1098, 5498, and W-2G for more information.

## Specific Instructions for Form 1098-E

File **Form 1098-E**, Student Loan Interest Statement, if you receive student loan interest of \$600 or more from an individual during the year in the course of your trade or business.

The \$600 threshold applies to each borrower regardless of the number of student loans obtained by that borrower. However, you may file a separate Form 1098-E for each student loan of the borrower, or you may file one Form 1098-E for the interest from all student loans of the borrower.

**Who must file.** File Form 1098-E if you are a financial institution, governmental unit (or any of its subsidiary agencies), educational institution, or any other person who receives student loan interest of \$600 or more from an individual during the year in the course of your trade or business.

If more than one person has a connection with the loan, only the first person to receive the interest payment must file Form 1098-E. For example, a loan service or collection agent receiving payments on behalf of the lender must file.

**Qualified student loan.** To be reportable for 2004, a student loan must be either:

- Subsidized, guaranteed, financed, or otherwise treated as a student loan under a program of the Federal, state, or local government, or of a post-secondary educational institution or
- Certified by the borrower as a student loan incurred solely to pay qualified higher education expenses. You may use Form W-9S to obtain the certification.

**Revolving accounts.** Report interest paid on revolving accounts, such as credit card accounts, only if the borrower certifies that all the loan proceeds are **solely** used to pay qualified higher education expenses. You do not have to verify the borrower's actual use of the funds. **Do not** report interest on mixed use loans.

**Loans under qualified plans.** **Do not** report interest on loans made under a qualified employer plan, as defined in section 72(p)(4), or under a contract purchased under a qualified employer plan within the meaning of section 72(p)(5).

**Additional information.** For more information about reporting student loan interest, see Regulations section 1.6050S-3.

**Statements to borrowers.** If you are required to file Form 1098-E, you must provide a statement or acceptable substitute, on paper or electronically, to the borrower. For more information about the requirements to furnish a statement to the borrower, see part **H** in the 2004 General Instructions for Forms 1099, 1098, 5498, and W-2G.

**Recipient's/lender's name, address, and telephone number box.** Enter the name, address, and telephone number of the filer of Form 1098-E. Use this same name and address on **Form 1096**, Annual Summary and Transmittal of U.S. Information Returns.

### Box 1. Student Loan Interest Received by Lender

Enter the interest you received on a student loan(s) during the calendar year. For loans made on or after September 1, 2004, you are required to include loan origination fees and/or capitalized interest in box 1 (see Regulations section 1.221-1(f)).

### Box 2. Checkbox

Check this box if loan origination fees and/or capitalized interest are reported in box 1.

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## Specific Instructions for Form 1098-T

File **Form 1098-T**, Tuition Statement, if you are an eligible educational institution. You must file for each student you enroll and for whom a reportable transaction is made. Also, if you are an insurer, file Form 1098-T for each individual for whom you made reimbursements or refunds of qualified tuition and related expenses.

**Exceptions.** You do not have to file Form 1098-T or furnish a statement for:

- Courses for which no academic credit is offered, even if the student is otherwise enrolled in a degree program;
- Nonresident alien students, unless requested by the student;
- Students whose qualified tuition and related expenses are entirely waived or paid entirely with scholarships; and
- Students whose qualified tuition and related expenses are covered by a formal billing arrangement between an institution and the student's employer or a governmental entity, such as the Department of Veterans Affairs or the Department of Defense.

**Who must file.** You must file Form 1098-T if you are an **eligible educational institution**. An eligible educational institution that is a governmental unit, or an agency or instrumentality of a governmental unit, is subject to the reporting requirements of Form 1098-T. A designated officer or employee of the governmental entity must satisfy the reporting requirements of Form 1098-T.

Eligible educational institutions may choose to report payments received, or amounts billed, for qualified tuition and related expenses. The school must use the same reporting method for all calendar years unless the IRS grants permission to change the reporting method.

If another person receives or collects payments of qualified tuition and related expenses on your behalf, the other person must file Form 1098-T. However, if the other person does not possess the information necessary to comply with the reporting requirements of Form 1098-T, then you must satisfy the reporting requirements of Form 1098-T.

Also, if you are an **insurer** engaged in a trade or business of making refunds or reimbursements of qualified tuition and related expenses, you are required to file Form 1098-T (see box 7 on page ET-3).

**Eligible educational institution.** An eligible educational institution is a college, university, vocational school, or other post-secondary educational institution that is described in section 481 of the Higher Education Act of 1965; and that is eligible to participate in the Department of Education's student aid programs. This includes most accredited public, nonprofit, and private post-secondary institutions.

**Qualified tuition and related expenses.** Qualified tuition and related expenses are tuition and fees a student must pay to be enrolled at or attend an eligible educational institution. The following are **not** qualified tuition and related expenses:

- Amounts paid for any course or other education involving sports, games, or hobbies unless the course or other education

is part of the student's degree program or is taken to acquire or improve job skills.

- Charges and fees for room, board, insurance, transportation, and similar personal, living, or family expenses.

**Academic credit.** Academic credit is credit awarded by an eligible educational institution for the completion of course work leading to a post-secondary degree, certificate, or other recognized post-secondary educational credential.

**Example.** Student A, a medical doctor, takes a course at University X's medical school. Student A takes the course to fulfill State Y's licensing requirement that medical doctors attend continuing medical education courses each year. Student A is not enrolled in a degree program at University X and takes the medical course through University X's continuing professional education program. University X does not award Student A credit toward a post-secondary degree on an academic transcript for the completion of the course but gives Student A a certificate of attendance upon completion. University X is not required to file Form 1098-T for the course taken by Student A.

**Academic period.** You must file Form 1098-T for each student who is enrolled in your institution for any academic period (e.g., semester, trimester, or quarter) in 2004. Determine your enrollment for each period under your own rules or use one of the following dates:

- 30 days after the first day of the academic period,
- A date during the period when enrollment data must be collected for purposes of the Integrated Postsecondary Education Data System administered by the Department of Education, or
- A date during the period when you must report enrollment data to the state, to your governing board, or to some other external governing body.

**Additional information.** For more information about reporting on Form 1098-T, see Regulations section 1.6050S-1.

**Statements to students.** If you are required to file Form 1098-T, you must provide a statement or acceptable substitute, on paper or electronically, to the student. For more information about the requirements to furnish a statement to each student, see part H in the 2004 General Instructions for Forms 1099, 1098, 5498, and W-2G.

**Student's address.** In the student's address box of Form 1098-T, enter the student's permanent address. That is, enter the student's home or other long-term address where he or she can receive forwarded mail. You may use a temporary address only if you do not know the permanent address.

**Information contact and service provider.** You must provide your name, address, and telephone number. In addition, you may include information on a third-party service provider who filed the form or who may answer questions about the statement. Enter the service provider's information in the box below the student's address; abbreviate the name and address as necessary to fit in the box.



*You must provide the telephone number for the information contact at the institution. Generally this is an administrative office or department. **Do not** provide the institution's general telephone number.*

### Box 1. Payments Received for Qualified Tuition and Related Expenses

If you use this method of reporting, enter the amount of payments received for qualified tuition and related expenses from any source during the calendar year. The amount reported is the total amount of payments received less any reimbursements or refunds made during the calendar year that relate to the payments received for the same calendar year.

### Box 2. Amounts Billed for Qualified Tuition and Related Expenses

If you use this method of reporting, enter the amounts billed during the calendar year for qualified tuition and related expenses. The amount reported is the total amount billed less



any reductions in charges made during the calendar year that relate to the amounts billed for the same calendar year.

**Box 3. Adjustments Made for a Prior Year**

**Payments received.** Enter reimbursements or refunds of qualified tuition and related expenses made during the calendar year that relate to payments received that were reported for a prior year.

**Amounts billed.** Enter any reductions in charges made for qualified tuition and related expenses made during the calendar year that relate to amounts billed that were reported for a prior year.

**Box 4. Scholarships or Grants**

Enter the total amount of any scholarships or grants that you administered and processed during the calendar year for the payment of the student's costs of attendance. However, see **Exceptions** on page ET-2.

**Box 5. Adjustments to Scholarships or Grants for a Prior Year**

Enter the amount of any reduction to the amount of scholarships or grants that were reported for a prior year.

**Box 6. Checkbox for Amounts for an Academic Period Beginning in January through March of 2005**

Check the box if any payments received, or amounts billed, for qualified tuition and related expenses reported for 2004 relate

to an academic period that begins in January through March of 2005.

**Box 7. Reimbursements or Refunds From an Insurance Contract**

If you are an insurer, enter the total amount of reimbursements or refunds of qualified tuition and related expenses that you made for the student during 2004.

**Box 8. Check if at Least Half-Time Student**

Check this box if the student was at least a half-time student during any academic period that began in 2004. A half-time student is a student enrolled for at least half the full-time academic workload for the course of study the student is pursuing. Your institution's standard for a half-time student work load must equal or exceed the standards established by the Department of Education under the Higher Education Act and set forth in 34 C.F.R. section 674.2(b).

**Box 9. Check if a Graduate Student**

Check this box if the student was a graduate student. The student is a graduate student if the student was enrolled in a program or programs leading to a graduate-level degree, graduate-level certificate, or other recognized graduate-level educational credential.



# Instructions for Forms 1099-A and 1099-C

Section references are to the Internal Revenue Code unless otherwise noted.

## An Item To Note

In addition to these specific instructions, you should also use the **2004 General Instructions for Forms 1099, 1098, 5498, and W-2G**. Those general instructions include information about:

- Backup withholding
- Magnetic media and electronic reporting requirements
- Penalties
- Who must file (nominee/middleman)
- When and where to file
- Taxpayer identification numbers
- Statements to recipients
- Corrected and void returns
- Other general topics

You can get the general instructions from the IRS website at [www.irs.gov](http://www.irs.gov) or by calling 1-800-TAX-FORM (1-800-829-3676).

## Specific Instructions for Form 1099-A

File **Form 1099-A**, Acquisition or Abandonment of Secured Property, for each borrower if you lend money in connection with your trade or business and, in full or partial satisfaction of the debt, you acquire an interest in property that is security for the debt, or you have reason to know that the property has been abandoned. You need not be in the business of lending money to be subject to this reporting requirement.

### Coordination With Form 1099-C

If, in the same calendar year, you cancel a debt in connection with a foreclosure or abandonment of secured property, it is not necessary to file both **Form 1099-A** and **Form 1099-C**, Cancellation of Debt, for the same debtor. You may file **Form 1099-C** only. You will meet your **Form 1099-A** filing requirement for the debtor by making entries in boxes 5 and 7 on **Form 1099-C**. However, if you file both **Forms 1099-A** and **1099-C**, make no **Form 1099-A** related entries in boxes 5 and 7 on **Form 1099-C**. See the instructions for **Form 1099-C** on page AC-2.

### Property

Property means any real property (such as a personal residence), any intangible property, and tangible personal property except:

- No reporting is required for tangible personal property (such as a car) held only for personal use. However, you must file **Form 1099-A** if the property is totally or partly held for use in a trade or business or for investment.
- No reporting is required if the property securing the loan is located outside the United States and the borrower has furnished the lender a statement, under penalties of perjury, that the borrower is an exempt foreign person (unless the lender knows that the statement is false).

### Who Must File

In addition to the general rule specified above, the following rules apply.

**Multiple owners.** If there are multiple owners of undivided interests in a single loan, such as in pools, fixed investment trusts, or other similar arrangements, the trustee, record owner, or person acting in a similar capacity must file **Form 1099-A** on behalf of all the owners of beneficial interests or participations.

In this case, only one form for each borrower must be filed on behalf of all owners with respect to the loan. Similarly, for bond issues, only the trustee or similar person is required to report.

**Governmental unit.** A governmental unit, or any of its subsidiary agencies, that lends money secured by property must file **Form 1099-A**.

**Subsequent holder.** A subsequent holder of a loan is treated as the lender for purposes of the reporting requirement for events occurring after the loan is transferred to the new holder.

**Multiple lenders.** If more than one person lends money secured by property and one lender forecloses or otherwise acquires an interest in the property and the sale or other acquisition terminates, reduces, or otherwise impairs the other lenders' security interests in the property, the other lenders must file **Form 1099-A** for each of their loans. For example, if a first trust holder forecloses on a building, and the second trust holder knows or has reason to know of such foreclosure, the second trust holder must file **Form 1099-A** for the second trust even though no part of the second trust was satisfied by the proceeds of the foreclosure sale.

### Abandonment

An abandonment occurs when the objective facts and circumstances indicate that the borrower intended to and has permanently discarded the property from use. You have "reason to know" of an abandonment based on all the facts and circumstances concerning the status of the property. You will be deemed to know all the information that would have been discovered through a reasonable inquiry when, in the ordinary course of business, you become aware or should become aware of circumstances indicating that the property has been abandoned. If you expect to commence a foreclosure, execution, or similar sale within 3 months of the date you had reason to know that the property was abandoned, reporting is required as of the date you acquire an interest in the property or a third party purchases the property at such sale. If you expect to but do not commence such action within 3 months, the reporting requirement arises at the end of the 3-month period.

### Statements to Borrowers

If you are required to file **Form 1099-A**, you must provide a statement to the borrower. Furnish a copy of **Form 1099-A** or an acceptable substitute statement to each borrower. For more information about the requirement to furnish a statement to the borrower, see part **H** in the **2004 General Instructions for Forms 1099, 1098, 5498, and W-2G**.

### Box 1. Date of Lender's Acquisition or Knowledge of Abandonment

For an acquisition, enter the date you acquired the secured property. An interest in the property generally is acquired on the earlier of the date title is transferred to the lender or the date possession and the burdens and benefits of ownership are transferred to the lender. If an objection period is provided by law, use the date the objection period expires. If you purchase the property at a sale held to satisfy the debt, such as at a foreclosure or execution sale, use the later of the date of sale or the date the borrower's right of redemption, if any, expires.

For an abandonment, enter the date you knew or had reason to know that the property was abandoned unless you expect to



commence a foreclosure, execution, or similar action within 3 months, as explained earlier. If a third party purchases the property at a foreclosure, execution, or similar sale, the property is treated as abandoned, and you have reason to know of its abandonment on the date of sale.

### Box 2. Balance of Principal Outstanding

Enter the balance of the debt outstanding at the time the interest in the property was acquired or on the date you first knew or had reason to know that the property was abandoned. Include only unpaid principal on the original debt. Do not include accrued interest or foreclosure costs.

### Box 3. Reserved

### Box 4. Fair Market Value (FMV) of Property

For a foreclosure, execution, or similar sale, enter the FMV of the property. See Temporary Regulations section 1.6050J-1T, Q/A-32. Generally, the gross foreclosure bid price is considered to be the FMV. If an abandonment or voluntary conveyance to the lender in lieu of foreclosure occurred and you checked "Yes" in box 5, enter the appraised value of the property. Otherwise, make no entry in this box.

### Box 5. Was Borrower Personally Liable for Repayment of the Debt

Enter an "X" in the applicable box to indicate whether the borrower was personally liable for repayment of the debt at the time the debt was created or, if modified, at the time of the last modification.

### Box 6. Description of Property

Enter a general description of the property. For real property, generally you must enter the address of the property, or, if the address does not sufficiently identify the property, enter the section, lot, and block.

For personal property, enter the applicable type, make, and model. For example, describe a car as "Car—2001 Honda Accord." Use a category such as "Office Equipment" to describe more than one piece of personal property, such as six desks and seven computers. Enter "CCC" for crops forfeited on Commodity Credit Corporation loans.

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## Specific Instructions for Form 1099-C

File **Form 1099-C**, Cancellation of Debt, for each debtor for whom you canceled a debt owed to you of \$600 or more only if:

1. You are an entity described under **Who Must File** below and
2. An identifiable event has occurred. It does not matter whether the actual cancellation is on or before the date of the identifiable event. See **When Is a Debt Canceled** on page AC-3.



*Form 1099-C must be filed regardless of whether the debtor is required to report the debt as income.*

The debtor may be an individual, corporation, partnership, trust, estate, association, or company.

Do not combine multiple cancellations of a debt to determine whether you meet the \$600 reporting requirement unless the separate cancellations are under a plan to evade the Form 1099-C requirements.

### Coordination With Form 1099-A

If, in the same calendar year, you cancel a debt in connection with a foreclosure or abandonment of secured property, it is not necessary to file both **Form 1099-A**, Acquisition or Abandonment of Secured Property, and Form 1099-C for the same debtor. You may file Form 1099-C only. You will meet your Form 1099-A filing requirement for the debtor by making entries in boxes 5 and 7 on Form 1099-C. However, you may file both Forms 1099-A and 1099-C; if you do, make no Form 1099-A related entries in boxes 5 and 7 on Form 1099-C. See

the instructions for Form 1099-A on page AC-1 and **Box 5** and **Box 7** on page AC-4.

### Who Must File

File Form 1099-C if you are:

1. A financial institution described in section 581 or 591(a) (such as a domestic bank, trust company, building and loan or savings and loan association).
2. A credit union.
3. A Federal government agency including:
  - a. A department,
  - b. An agency,
  - c. A court or court administrative office, or
  - d. An instrumentality in the executive, judicial, or legislative branch of the government, including government corporations.
4. Any of the following, its successor, or subunit of one of the following:
  - a. Federal Deposit Insurance Corporation,
  - b. Resolution Trust Corporation,
  - c. National Credit Union Administration,
  - d. Any military department,
  - e. U.S. Postal Service, or
  - f. Postal Rate Commission.
5. A corporation that is a subsidiary of a financial institution or credit union, but only if, because of your affiliation, you are subject to supervision and examination by a Federal or state regulatory agency.
6. Any organization, a significant trade or business of which is the lending of money, such as a finance company or credit card company (whether or not affiliated with a financial institution). The lending of money is a significant trade or business if money is lent on a regular and continuing basis. Proposed Regulations section 1.6050P-2(b) lists three safe harbors (see **Safe harbor rules** below) under which reporting may not be required for the current year. The Proposed Regulations may not be finalized in 2004 and, therefore, will not be effective for 2005. You may rely on the Proposed Regulations to determine whether your organization has a significant trade or business of lending money.

**Safe harbor rules under Proposed Regulations section 1.6050P-2(b).** The three safe harbor rules in which an entity will not be considered to have a significant trade or business of lending money are:

1. **No prior year reporting required.** An organization will not have a significant trade or business of lending money for the current year if its gross income from lending money in the most recent test year (see item 3 below) is less than **both** 15% of the organization's gross income **and** \$5 million.
2. **Prior year reporting requirement.** An organization that had a prior year reporting requirement will not have a significant trade or business of lending money for the current year if, for each of the three most recent test years, its gross income from lending money is less than **both** 10% of the organization's gross income **and** \$3 million.
3. **No test year.** Newly formed organizations are considered not to have a significant trade or business of lending money even if the organization lends money on a regular and continuing basis. However, this safe harbor does not apply to an entity formed or availed of for the principal purpose of holding loans acquired or originated by another entity. In this instance, the transferee entity (including real estate mortgage investment conduits (REMICs) and pass-through securitized indebtedness arrangements) may be required to report cancellation of indebtedness on Form 1099-C. See Proposed Regulations section 1.6050P-1(e)(5).

**Test year defined.** A test year is a taxable year of the organization that ends before July 1 of the previous calendar year. For example, X, a calendar year taxpayer who has a significant trade or business of lending money, is formed in year one. X will not have a test year in year one or year two. However, for year three, X's test year will be year one. In year three, year one is the only year that ended before July 1 of the previous calendar year (in this example, year two).

**Penalties.** Also see Notice 2001-8, 2001-4 I.R.B. 374, for suspension of penalties under sections 6721 and 6722. For more information, see **Penalties** in the **2004 General Instructions for Forms 1099, 1098, 5498, and W-2G**.

**Multiple creditors.** If a debt is owned (or treated as owned for Federal income tax purposes) by more than one creditor, each creditor that is described under **Who Must File** on page AC-2 must issue a Form 1099-C if that creditor's part of the canceled debt is \$600 or more. To meet this requirement, a lead bank, fund administrator, or other designee of the creditor may file a single Form 1099-C reporting the aggregate canceled debt or may file Form 1099-C for that creditor's part of the canceled debt. Use any reasonable method to determine the amount of each creditor's part of the canceled debt.

Debt owned by a partnership is treated as owned by the partners and must follow the rules for multiple creditors.

**Pass-throughs and REMICs.** Until further guidance is issued, no penalty will apply for failure to file Form 1099-C, or provide statements to debtors, for a canceled debt held in a pass-through securitized debt arrangement or held by a REMIC. However, see item **3** under **Safe harbor rules** on page AC-2.

A pass-through securitized debt arrangement is any arrangement in which one or more debts are pooled and held for 20 or more persons whose interests in the debt are undivided co-ownership interests that are freely transferable. Co-ownership interests that are actively traded personal property (as defined in Regulations section 1.1092(d)-1) are presumed to meet these requirements.

## Debt Defined

A debt is any amount owed to you including stated principal, stated interest, fees, penalties, administrative costs, and fines. The amount of debt canceled may be all or only part of the total amount owed. However, for a lending transaction, you are required to report only the stated principal. See **Exceptions** below.

## When To File

Generally, file Form 1099-C for the year in which an identifiable event occurs. See **Exceptions** below. If you cancel a debt before an identifiable event occurs, you may choose to file Form 1099-C for the year of cancellation. No further reporting is required even if a second identifiable event occurs on the same debt. Also, you are not required to file an additional or corrected Form 1099-C if you receive payment on a prior year debt.

## When Is a Debt Canceled

A debt is cancelled on the date an identifiable event occurs. An **identifiable event** is:

1. A discharge in bankruptcy under Title 11 of the U.S. Code for business or investment debt (see **Exceptions** on this page).
2. A cancellation or extinguishment making the debt unenforceable in a receivership, foreclosure, or similar Federal or state court proceeding.
3. A cancellation or extinguishment when the statute of limitations for collecting the debt expires, or when the statutory period for filing a claim or beginning a deficiency judgment proceeding expires. Expiration of the statute of limitations is an identifiable event only when a debtor's affirmative statute of limitations defense is upheld in a final judgment or decision of a court and the appeal period has expired.
4. A cancellation or extinguishment when the creditor elects foreclosure remedies that by law end or bar the creditor's right to collect the debt. This event applies to a mortgage lender or holder who is barred by local law from pursuing debt collection after a "power of sale" in the mortgage or deed of trust is exercised.
5. A cancellation or extinguishment due to a probate or similar proceeding.
6. A discharge of indebtedness under an agreement between the creditor and the debtor to cancel the debt at less than full consideration.

7. A discharge of indebtedness because of a decision or a defined policy of the creditor to discontinue collection activity and cancel the debt. A creditor's defined policy can be in writing or an established business practice of the creditor. A creditor's practice to stop collection activity and abandon a debt when a particular nonpayment period expires is a defined policy.

8. The expiration of nonpayment testing period. This event occurs when the creditor has not received a payment on the debt during the testing period. The testing period is a 36-month period ending on December 31 plus any time when the creditor was precluded from collection activity by a stay in bankruptcy or similar bar under state or local law. The creditor can rebut the occurrence of this identifiable event if (a) the creditor (or a third-party collection agency) has engaged in significant bona fide collection activity during the 12-month period ending on December 31 or (b) facts and circumstances that exist on January 31 following the end of the 36-month period indicate that the debt was not canceled. Significant bona fide collection activity does not include nominal or ministerial collection action, such as an automated mailing. Facts and circumstances indicating that a debt was not canceled include the existence of a lien relating to the debt (up to the value of the security) or the sale or packaging for sale of the debt by the creditor.

## Exceptions

You are not required to report on Form 1099-C the following:

1. **Certain bankruptcies.** You are not required to report a debt canceled in bankruptcy unless you know from information included in your books and records that the debt was incurred for business or investment purposes. If you are required to report a business or investment debt canceled in bankruptcy, report it for the later of (a) the year in which the amount of canceled debt first can be determined or (b) the year in which the debt is canceled in bankruptcy. A debt is incurred for business if it is incurred in connection with the conduct of any trade or business other than the trade or business of performing services as an employee. A debt is incurred for investment if it is incurred to purchase property held for investment (as defined in section 163(d)(5)).
2. **Interest.** You are not required to report interest. However, if you choose to report interest as part of the canceled debt in box 2, you must show the interest separately in box 3.
3. **Nonprincipal amounts.** For a lending transaction, you are not required to report any amount other than stated principal. A lending transaction occurs when a lender loans money to, or makes advances on behalf of, a borrower (including revolving credit and lines of credit). Nonprincipal amounts include penalties, fines, fees, and administrative costs. However, for a nonlending transaction, report any of these amounts that are included in the debt.
4. **Foreign debtors.** Until further guidance is issued, no penalty will apply if a financial institution does not file Form 1099-C for a debt canceled by its foreign branch or foreign office for a foreign debtor provided all the following apply:
  - a. The financial institution is engaged in the active conduct of a banking or similar business outside the United States.
  - b. The branch or office is a permanent place of business that is regularly maintained, occupied, and used to carry on a banking or similar financial business.
  - c. The business is conducted by at least one employee of the branch or office who is regularly in attendance at the place of business during normal working hours.
  - d. The indebtedness is extended outside the United States by the branch or office in connection with that trade or business.
  - e. The financial institution does not know or have reason to know that the debtor is a U.S. person.
5. **Related parties.** Generally, a creditor is not required to file Form 1099-C for the deemed cancellation of a debt that occurs when the creditor acquires the debt of a related debtor, becomes related to the debtor, or transfers the debt to another creditor related to the debtor. However, if the transfer to a related party by the creditor was for the purpose of avoiding the

Form 1099-C requirements, Form 1099-C is required. See section 108(e)(4).

6. **Release of a debtor.** You are not required to file Form 1099-C if you release one of the debtors on a debt as long as the remaining debtors are liable for the full unpaid amount.

7. **Guarantor or surety.** You are not required to file Form 1099-C for a guarantor or surety. A guarantor is not a debtor for purposes of filing Form 1099-C even if demand for payment is made to the guarantor.

8. **Seller financing.** Under the Proposed Regulations, organizations whose principal trade or business is the sale of non-financial goods or non-financial services, and who extend credit to customers in connection with the purchase of those non-financial goods and non-financial services, are not considered to have a significant trade or business of lending money, with respect to the credit extended in connection with the purchase of those goods or services, for reporting discharge of indebtedness on Form 1099-C. See Proposed Regulations section 1.6050P-2(c). But the reporting applies if a separate financing subsidiary of the retailer extends the credit to the retailer's customers.

### Multiple Debtors

For debts of \$10,000 or more incurred after 1994 that involve debtors who are jointly and severally liable for the debt, you must report the entire amount of the canceled debt on each debtor's Form 1099-C. Multiple debtors are jointly and severally liable for a debt if there is no clear and convincing evidence to the contrary. If it can be shown that joint and several liability does not exist, a Form 1099-C is required for each debtor for whom you canceled a debt of \$600 or more.

For debts incurred before 1995 and for debts of less than \$10,000 incurred after 1994, you must file Form 1099-C only for the primary (or first-named) debtor.

If you know or have reason to know that the multiple debtors were husband and wife who were living at the same address when the debt was incurred, and you have no information that these circumstances have changed, you may file only one Form 1099-C.

### Recordkeeping

If you are required to file Form 1099-C, you must retain a copy of that form or be able to reconstruct the data for at least 4 years from the due date of the return.

### Requesting TINs

You must make a reasonable effort to obtain the correct name and taxpayer identification number (TIN) of the person whose debt was canceled. You may obtain the TIN when the debt is incurred. If you do not obtain the TIN before the debt is

canceled, you must request the debtor's TIN. Your request must clearly notify the debtor that the IRS requires the debtor to furnish its TIN and that failure to furnish such TIN subjects the debtor to a \$50 penalty imposed by the IRS. You may use **Form W-9**, Request for Taxpayer Identification Number and Certification, to request the TIN. However, a debtor is not required to certify his or her TIN under penalties of perjury.

### Statements to Debtors

If you are required to file Form 1099-C, you must provide a statement to the debtor. Furnish a copy of Form 1099-C or an acceptable substitute statement to each debtor. For more information about the requirement to furnish a statement to the debtor, see part **H** in the **2004 General Instructions for Forms 1099, 1098, 5498, and W-2G**. You have furnished a statement to the debtor if it is mailed to the debtor's last known address.

### Box 1. Date Canceled

Enter the date the debt was canceled. See **When Is a Debt Canceled** on page AC-3.

### Box 2. Amount of Debt Canceled

Enter the amount of the canceled debt. See **Debt Defined** on page AC-3 and **Exceptions** on page AC-3. Do not include any amount the lender receives in satisfaction of the debt by means of a settlement agreement, foreclosure sale, etc.

### Box 3. Interest if Included in Box 2

Enter any interest you included in the canceled debt in box 2. You are not required to report interest in box 2. But if you do, you also must report it in box 3.

### Box 4. Reserved

### Box 5. Debt Description

Enter a description of the origin of the debt, such as student loan, mortgage, or credit card expenditure. Be as specific as possible. If you are filing a combined Form 1099-C and 1099-A, also enter a description of the property.

### Box 6. Check for Bankruptcy

Enter an "X" in the checkbox if you are reporting a debt canceled in bankruptcy.

### Box 7. Fair Market Value (FMV) of Property

Make an entry in this box only if you are filing a combined Form 1099-C and 1099-A. For a foreclosure, execution, or similar sale, enter the FMV of the property. Generally, the gross foreclosure bid price is considered to be the FMV. If an abandonment or voluntary conveyance to the lender in lieu of foreclosure occurred, enter the appraised value of the property.



# Instructions for Form 1099-B

Section references are to the Internal Revenue Code unless otherwise noted.

## What's New for 2004

Temporary Regulations sections 1.6045-3T and 1.6043-4T were reissued under Treasury Decision 9101. Any broker that holds stock for a client in a corporation that the broker knows or has reason to know had an acquisition of control or a substantial change in capital structure must file **Form 1099-B**, Proceeds From Broker and Barter Exchange Transactions, not **Form 1099-CAP**, Changes in Corporate Control and Capital Structure. The reporting is required by the broker if the shareholder is required to recognize gain (under section 367(a)) as a result of the transaction and is not an exempt recipient. See **Acquisition of control or substantial change in capital structure** on this page. For losses reported to recipients from these transactions, see **Box 2. Stocks, Bonds, etc.** instructions on page B-3.

## An Item To Note

In addition to these specific instructions, you should also use the **2004 General Instructions for Forms 1099, 1098, 5498, and W-2G**. Those general instructions include information about:

- Backup withholding
- Magnetic media and electronic reporting requirements
- Penalties
- Who must file (nominee/middleman)
- When and where to file
- Taxpayer identification numbers
- Statements to recipients
- Corrected and void returns
- Other general topics

You can get the general instructions from the IRS website at [www.irs.gov](http://www.irs.gov) or by calling 1-800-TAX-FORM (1-800-829-3676).

## Specific Instructions for Form 1099-B

A broker or barter exchange must file **Form 1099-B**, Proceeds From Broker and Barter Exchange Transactions, by February 28, 2005 (March 31 if filing electronically) for each person:

- For whom the broker has sold (including short sales) stocks, bonds, commodities, regulated futures contracts, foreign currency contracts, forward contracts, debt instruments, etc.,
- Who received cash, stock, or other property from a corporation that the broker knows or has reason to know has undergone a change in control or substantial change in capital structure, or
- Who exchanged property or services through a barter exchange.

## Brokers

A broker is any person who, in the ordinary course of a trade or business, stands ready to effect sales to be made by others. A broker may include a U.S. or foreign person or a governmental unit and any subsidiary agency.

You are considered a broker if:

- You are an obligor that regularly issues and retires its own debt obligations or
- You are a corporation that regularly redeems its own stock.

However, for a sale, redemption, or retirement at an office outside the United States, only a U.S. payer or U.S. middleman is a broker. See Regulations sections 1.6045-1(g)(1)(i) and 1.6049-5(c)(5).

You are **not considered** a broker if:

- You are a corporation that purchases odd-lot shares from its stockholders on an irregular basis (unless facts indicate otherwise),
- You manage a farm for someone else, or
- You are an international organization that redeems or retires its own debt. See Regulations section 1.6045-1(a)(1).

## Reporting

**Acquisition of control or substantial change in capital structure.** Any broker that holds shares on behalf of a customer in a corporation that the broker knows or has reason to know based on readily available information has engaged in a transaction of acquisition of control or substantial change in capital structure, must file Form 1099-B. Readily available information includes information from a clearing organization, such as the Depository Trust Company (DTC) or from information published on the IRS website or in an IRS publication.

A broker is not required to file Form 1099-B for a customer who is an exempt recipient (under Regulations sections 1.6045-1(c)(3)(i) or 1.6043-4T(b)(5)). For a list of exempt recipients, see the **2004 Instructions for Form 1099-CAP**.

If a broker is required to file a Form 1099-B for a customer to report proceeds from an acquisition of corporate control or change in capital structure, the broker may satisfy the filing requirements by filing and furnishing one Form 1099-B for amounts reported under both Regulations sections 1.6045-1 and 1.6045-3T. However, if the customer had additional transactions during the year with the reporting corporation, then a separate Form 1099-B would be required to report each of these transactions.

**Cash on delivery account.** For a sale of securities through a "cash on delivery" or similar account, only the broker that receives the gross proceeds from the sale against delivery of the securities sold is required to report the sale. However, if such broker's customer is a "second-party broker" that is an exempt recipient, only the second-party broker is required to report the sale.

**Foreign currency.** If the proceeds of a sale are paid in foreign currency, you must convert the amount to be reported into U.S. dollars. Generally, you must convert the foreign currency on the payment date at the spot rate or by following a reasonable spot rate convention. For example, you may use a month-end spot rate or monthly average spot rate. See Regulations section 1.6045-1(d)(6).

**Transactional/aggregate reporting.** Report each transaction (other than regulated futures or foreign currency contracts) on a separate Form 1099-B. Report transactions

involving regulated futures or foreign currency contracts on an aggregate basis.

**Substitute payments.** Do not report substitute payments in lieu of dividends and tax-exempt interest on Form 1099-B. Instead, report these payments in **Box 8 of Form 1099-MISC**, Miscellaneous Income. See section 6045(d) and the **Instructions for Form 1099-MISC**.

**Stock options.** If an employee, former employee, or other service provider, in connection with the performance of services, obtains substantially vested shares of stock from the exercise of a stock option, and sells that stock through a broker on the same day, then the broker may not be required to report the sale on Form 1099-B. See Rev. Proc. 2002-50, 2002-29 I.R.B. 173 for details.

**Partnership sale.** **Form 8308**, Report of a Sale or Exchange of Certain Partnership Interests, does not have to be filed if, under section 6045, a return is required to be filed by a broker on Form 1099-B for the transfer of the partnership interest.

**Exceptions.** Brokers are not required to file, but may file, Form 1099-B for:

1. Sales for exempt recipients, including corporations, charitable organizations, IRAs, the United States, a state, or political subdivisions.
2. Sales initiated by dealers in securities and financial institutions.
3. Sales by custodians and trustees, provided the sale is reported on a properly filed **Form 1041**, U.S. Income Tax Return for Estates and Trusts.
4. Sales at issue price of interests in certain regulated investment companies.
5. Obligor payments on:
  - a. Nontransferable obligations, such as savings bonds or CDs.
  - b. Obligations for which gross proceeds are reported on other Forms 1099, such as stripped coupons issued before July 1, 1982.
  - c. Retirement of short-term obligations with original issue discount (reported on **Form 1099-INT**, Interest Income). However, Form 1099-B is required for the retirement of short-term state obligations having no original issue discount.
  - d. Callable demand obligations that have no premium or discount.
6. Sales of foreign currency unless under a forward or regulated futures contract that requires delivery of foreign currency.
7. Sales of fractional shares of stock if gross proceeds are less than \$20.
8. Retirements of book-entry or registered form obligations if no interim transfers have occurred.
9. Exempt foreign persons as defined in Regulations section 1.6045-1(g)(1)(i).
10. Sales of Commodity Credit Corporation certificates.
11. Spot or forward sales of agricultural commodities (see below).
12. Some sales of precious metals (see below).
13. Grants or purchases of options, exercises of call options, or entering into contracts that require delivery of personal property or an interest therein.

**Spot or forward sales of agricultural commodities.** Agricultural commodities include grain, feed, livestock, meat, oil seed, timber, or fiber. A spot sale is a sale that results in almost immediate delivery of a commodity. A forward sale is a sale under a forward contract.

However, report sales of agricultural commodities under a regulated futures contract, sales of derivative interests in agricultural commodities, and sales of receipts for agricultural commodities issued by a designated warehouse.

A designated warehouse is a warehouse, depository, or other similar entity designated by a commodity exchange in which or out of which a particular type of agricultural commodity is deliverable to satisfy a regulated futures contract. Sales of warehouse receipts issued by any other warehouse are not reportable.

**Sales of precious metals.** A sale of a precious metal (gold, silver, platinum, or palladium) in any form that may be used to satisfy a Commodity Futures Trading Commission (CFTC)-approved regulated futures contract (RFC) if the quantity, by weight or by number of items, is less than the minimum required to satisfy a CFTC-approved RFC. A sale of a precious metal in any form that cannot be used to satisfy a CFTC-approved RFC is not reportable.

For example, Form 1099-B is not required to be filed for the sale of a single gold coin in the form and quality deliverable in satisfaction of a CFTC-approved contract because all CFTC contracts for gold coins currently call for delivery of at least 25 coins.

Sales of precious metals for a single customer during a 24-hour period must be aggregated and treated as a single sale to determine if this exception applies. This exception does not apply if the broker knows or has reason to know that a customer, either alone or with a related person, is engaging in sales to avoid information reporting.



*No reporting on Form 1099-B will be required for securities futures contracts (SFCs) unless guidance issued after Notice 2003-8, 2003-4 I.R.B. 310, imposes such a reporting obligation.*

**Exemption certificate.** A broker may require an exempt recipient to file a properly completed **Form W-9**, Request for Taxpayer Identification Number and Certification, or similar form. You may treat an exempt recipient that fails to do so as a recipient that is not exempt. See the 2004 General Instructions for Forms 1099, 1098, 5498, and W-2G for more information.

## Barter Exchanges

A **barter exchange** is any person or organization with members or clients that contract with each other (or with the barter exchange) to jointly trade or barter property or services. The term does not include arrangements that provide solely for the informal exchange of similar services on a noncommercial basis. Persons who do not contract a barter exchange but who trade services do not file Form 1099-B. However, they may be required to file Form 1099-MISC.

**Transactional/aggregate reporting.** Barter exchanges involving noncorporate members or clients must report each transaction on a separate Form 1099-B. Transactions involving corporate members or clients of a barter exchange may be reported on an aggregate basis.

**Member information.** In the recipient area of the Form 1099-B, enter information about the member or client that provided the property or services in the exchange.

**Exceptions.** Barter exchanges are not required to file Form 1099-B for:

1. Exchanges through a barter exchange having fewer than 100 transactions during the year.
2. Exempt foreign persons as defined in Regulations section 1.6045-1(g)(1).
3. Exchanges involving property or services with a fair market value of less than \$1.00.

## Brokers and Barter Exchanges

**Statements to recipients.** If you are required to file Form 1099-B, you must provide a statement to the recipient. For more information about the requirement to furnish a

statement to the recipient, see part **H** in the 2004 General Instructions for Forms 1099, 1098, 5498, and W-2G.

**2nd TIN not.** You may enter an "X" in this box if you were notified by the IRS twice within 3 calendar years that the payee provided an incorrect taxpayer identification number (TIN). If you mark this box, the IRS will not send you any further notices about this account.



*For more information on the TIN Matching System offered by the IRS, see the 2004 General Instructions for Forms 1099, 1098, 5498, and W-2G.*

### **Corporation's identifying information**

For an acquisition of control or change in capital structure, enter the corporation's name, address, and EIN.

#### **Box 1a. Date of Sale or Exchange**

For broker transactions, enter the trade date of the sale or exchange. For barter exchanges, enter the date that cash, property, a credit, or scrip is actually or constructively received.

#### **Box 1b. CUSIP No.**

For transactional reporting by brokers, enter the CUSIP (Committee on Uniform Security Identification Procedures) number of the obligation.

#### **Box 2. Stocks, Bonds, etc.**

Enter the aggregate gross proceeds from all dispositions of securities (including short sales), commodities, or forward contracts. For reporting an acquisition of control or substantial change in capital structure, include in box 2, the gross proceeds from cash, stock, and fair market value of any property received. See **Reporting** on page B-1 for more information for brokers. Show a loss, such as one from a closing transaction on a forward contract, as a negative amount by enclosing it in parentheses. If the aggregate amount reported includes a loss from a corporation that has undergone a change in control or substantial change in capital structure, advise the recipient separately of the loss amount and check box 12. The recipient is prohibited from using the loss to offset other capital gains.

To determine gross proceeds, you may take into account commissions and option premiums if this treatment is consistent with your books. You may not take into account state and local transfer taxes. Check the applicable box to indicate which amount has been reported to the IRS. Do not include amounts shown in boxes 8 through 11.

Do not include any accrued interest on bonds sold between payment dates (or on a payment date) in this box. Instead, report this accrued interest on Form 1099-INT.

#### **Box 3. Bartering**

Enter the gross amounts received by a member or client of a barter exchange. This includes cash received, the fair market value of any property or services received, and the fair market value of any trade credits or scrip credited to the member's or client's account. However, do not include

amounts received by a member or client in a subsequent exchange of credits or scrip. **Do not report negative amounts.**

#### **Box 4. Federal Income Tax Withheld**

Enter backup withholding. For example, persons who have not furnished their TIN to you in the manner required are subject to withholding at a 28% rate on certain amounts required to be reported on this form. Use Form W-9 to request the TIN of the recipient. For foreign recipients, see part **F** in the 2004 General Instructions for Forms 1099, 1098, 5498, and W-2G.

#### **Box 5. Number of Shares Exchanged**

Enter the number of shares in the reporting corporation that were exchanged by the shareholder.

#### **Box 6. Classes of Stock Exchanged**

Enter the class of stock (e.g., preferred, common, etc.) exchanged in the reporting corporation for cash or other property received. Abbreviate the class to fit the entry. For example, enter "C" for common stock, "P" for preferred, or "O" for other. Also abbreviate any subclasses.

#### **Box 7. Description**

For transactions other than an acquisition of control or substantial change in capital structure, enter a brief description of the disposition item (e.g., 100 shares of XYZ Corp. stock). If necessary, abbreviate the description so that it fits within box 7. For regulated futures contracts and forward contracts, enter "RFC" or other appropriate description.

For bartering transactions, show the services or property provided.

#### **Regulated Futures Contracts—Brokers Only:**

##### **Box 8. Profit or (Loss) Realized in 2004**

Enter the profit or (loss) realized by the customer on closed regulated futures or foreign currency contracts in 2004.

##### **Box 9. Unrealized Profit or (Loss) on Open Contracts—12/31/2003**

Enter the unrealized profit or (loss) on open regulated futures or foreign currency contracts at the end of 2003.

##### **Box 10. Unrealized Profit or (Loss) on Open Contracts—12/31/2004**

Enter the unrealized profit or (loss) on open regulated futures or foreign currency contracts at the end of 2004.

##### **Box 11. Aggregate Profit or (Loss)**

Enter the aggregate profit or (loss) for the year from regulated futures or foreign currency contracts. Use boxes 8, 9, and 10 to figure the aggregate profit or (loss).





# Instructions for Form 1099-CAP

Section references are to the Internal Revenue Code unless otherwise noted.

## What's New for 2004

Revised Temporary Regulations section 1.6043-4T, T.D. 9101, was issued December 30, 2003, and includes the following changes to Form 1099-CAP reporting:

- A corporation that is required to file **Form 8806**, Information Return for Acquisition of Control or Substantial Change in Capital Structure, under revised Temporary Regulations section 1.6043-4T, must file **Form 1099-CAP**, Changes in Corporate Control and Capital Structure, with the IRS and furnish a copy to each shareholder who receives cash, stock, or other property as a result of the acquisition of control or substantial change in capital structure (under section 367(a)) and who is not an exempt recipient. However, if the corporation can reasonably determine that the receipt of such stock would not cause the shareholder to recognize gain, then the corporation is not required to report the fair market value of any stock provided to a shareholder.
- The list of exempt recipients has been expanded and includes brokers.
- Brokers will not receive Forms 1099-CAP from a corporation and are not required to issue Form 1099-CAP. Instead, a broker who has reason to know, based on readily available information, that a transaction described in 1.6043-4T(c) or (d) has occurred, is required to file **Form 1099-B**, Proceeds From Broker and Barter Exchange Transactions. See the **2004 Instructions for Form 1099-B** for reporting information.
- Corporations are required to furnish copies of Forms 1099-CAP to clearing organizations by January 5 of the year following the year in which the transaction took place.

## An Item To Note

In addition to these specific instructions, you should also use the **2004 General Instructions for Forms 1099, 1098, 5498, and W-2G**. Those general instructions include information about:

- Backup withholding
- Magnetic media and electronic reporting requirements
- Penalties
- Who must file (nominee/middleman)
- When and where to file
- Taxpayer identification numbers
- Statements to recipients
- Corrected and void returns
- Other general topics

You can get the general instructions from the IRS website at [www.irs.gov](http://www.irs.gov) or by calling 1-800-TAX-FORM (1-800-829-3676).

## Specific Instructions for Form 1099-CAP

File **Form 1099-CAP**, Changes in Corporate Control and Capital Structure, for shareholders of a corporation if control of the corporation was acquired or it underwent a substantial change in capital structure. Revised Temporary Regulations section 1.6043-4T(b) requires you to report this information to the IRS and to shareholders on Form 1099-CAP. Form 1099-CAP is furnished to shareholders who receive cash, stock, or other property from an acquisition of control or a substantial change in capital structure.

### When To File

File Form 1099-CAP with the IRS by February 28, 2005 (March 31, 2005, if filed electronically); furnish the statement to shareholders by January 31, 2005.

#### **Special reporting date—clearing organizations.**

The revised temporary regulations require a corporation to file Form 1099-CAP and furnish a copy to each of its shareholders who receives any stock or other consideration in the transaction and who is not an exempt recipient. A clearing organization, such as the Depository Trust Company (DTC), is not an exempt recipient. The corporation is therefore required to file and furnish a copy of Form 1099-CAP to a clearing organization with respect to shares held by the clearing organization unless it makes a consent election, as discussed below. Furnish Form 1099-CAP to the clearing organization by January 5 of the year following the calendar year in which the transaction took place. If you are furnishing the DTC with Forms 1099-CAP, see Notice 2004-9, 2004-4 I.R.B. 334, for specific mailing requirements.

### Who Must File

A domestic corporation that is required to file Form 8806, Statement of Acquisition of Control or Change in Capital Structure, must file Form 1099-CAP with the IRS and furnish a copy to each shareholder who receives any stock or other consideration in the transaction and who is not an exempt recipient. Corporations do not file Form 1099-CAP under one of the following conditions:

- The transaction involves the acquisition of control within an affiliated group or involves stock valued at less than \$100 million. See revised Temporary Regulations section 1.6043-4T for more information.
- The corporation makes the consent election on Form 8806. Under the election, the corporation is not required to file Form 1099-CAP with respect to shares held by a clearing organization because it allows the IRS to publish information necessary for brokers to meet their reporting obligations under Treasury Regulations section 1.6045-3T.

- The corporation properly reports the transaction under section 6043(a).
- Information returns are filed under section 6042 (Form 1099-DIV) or section 6045 (Form 1099-B), unless the corporation knows or has reason to know that such returns were not filed.

### Exempt Recipients

The corporation is not required to file Form 1099-CAP for the following shareholders including brokers who are also exempt:

- Any shareholder who receives only stock for its stock in the corporation.
- Any shareholder whose amount of cash plus the fair market value (FMV) of any stock and other property does not exceed \$1,000.
- Any shareholder from whom the corporation has received a properly completed exemption certificate.
- Any one of the following:
  1. A corporation, except a subchapter S corporation;
  2. A tax-exempt organization;
  3. An individual retirement account (IRA);
  4. The U.S. government or a state;
  5. A foreign government, an international organization, or a foreign central bank of issue;
  6. A real estate investment trust (REIT);
  7. A regulated investment company (RIC);
  8. A securities or commodities dealer;
  9. An entity registered under the Investment Company Act of 1940;
  10. A common trust fund; or
  11. A financial institution such as a bank, savings and loan, credit union, or similar organization.
- Any foreign person the corporation associates with a valid **Form W-8BEN**, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding, or other documentation upon which the corporation relies in order to treat the shareholder as a foreign beneficial owner or foreign payee. See Regulations section 1.6049-5(c) for more information.



*Corporations are not relieved of their withholding obligations on nonresident aliens under section 1441.*

### Acquisition of Control

An acquisition of control of a corporation (first corporation) occurs if, in a transaction or series of related transactions, either:

- The stock representing control of the first corporation is distributed by a second corporation to shareholders of the second corporation and the FMV of such stock on the date of distribution is \$100 million or more; **or**
- Before an acquisition of stock of the first corporation (directly or indirectly) by a second corporation, the second corporation does not have control of the first corporation; after the acquisition, the second corporation has control of the first corporation; the FMV of the stock acquired in the transaction and in any related transactions as of the date or dates on which such stock was acquired is \$100 million or more; and the shareholders of the first corporation (determined without applying the constructive ownership rule of section 318(a)) receive cash, stock, or other property pursuant to the acquisition.

For these purposes, **control is** defined as the ownership of stock possessing at least 50 percent of the

total combined voting power of all classes of stock entitled to vote, or at least 50 percent of the total value of shares of all classes of stock.

See Form 8806 and Temporary Regulations section 1.6043-4T(c) for details and special rules with respect to constructive ownership of stock.

**Section 338 election.** An acquisition of stock of a corporation under which a section 338 election is made is treated as an acquisition of stock and not as an acquisition of the assets of the corporation.

### Substantial Change in Capital Structure

A change in capital structure occurs if a corporation takes part in one or more of the following transactions:

- Recapitalizes its stock;
- Redeems its stock (including deemed redemptions);
- Merges, consolidates, or otherwise combines with another corporation or transfers all or substantially all of its assets to one or more corporations;
- Transfers all or part of its assets to another corporation under bankruptcy proceedings including distributing its stock or securities; or
- Changes its identity, form, or place of organization.

### Penalties for Failure To File

The penalties under section 6652(l) for failure to file information returns under section 6043(c) apply. For purposes of the 6652(l) penalty, Form 8806 and all Forms 1099-CAP required to be filed are treated as one return. Thus, the penalty will not exceed \$500 for each day the failure continues, up to a maximum of \$100,000, for any acquisition of control or any substantial change in capital structure. If a corporation (transferor) transfers all or substantially all of its assets to another entity (transferee) and is required to file Form 1099-CAP, the transferor must satisfy the reporting requirements. If the transferor fails to file Form 1099-CAP, then the transferee must meet the filing requirements. If the filing requirements are not met by either the transferor or transferee, then both are jointly and severally liable for the applicable penalties.

Failure to file Forms 1099-CAP also includes the requirement to file on magnetic media or electronically. For more information on penalties under sections 6011 and its regulations, see the 2004 General Instructions for Forms 1099, 1098, 5498, and W-2G.

### Statement to Shareholder

If required to file form 1099-CAP, you must provide a statement to the shareholder. For more information about the requirement to furnish a statement to the shareholder, see part **H** in the General Instructions for Forms 1099, 1098, 5498, and W-2G.

### Name, Address, Telephone Number, and TIN

Generally this will be the reporting corporation's information and employer identification number (EIN).

### Box 1. Date of Sale or Exchange

Enter the trade date of the sale or exchange, actually or constructively received.

### Box 2. Aggregate Amount Received

Enter the aggregate amount of cash, stock, and other property received in exchange for the number of shares exchanged in the reporting corporation.

**Box 3. No. of Shares Exchanged**

Enter the number of shares the shareholder exchanged in the reporting corporation for cash or other property received.

**Box 4. Classes of Stock Exchanged**

Enter the class or classes of stock (e.g., preferred, common, etc.) exchanged in the reporting corporation for cash or other property received. Abbreviate the class to fit the entry. For example, you may enter "C" for common stock, "P" for preferred, or "O" for other. Also, abbreviate any subclasses.

**Box 6. Check the Box if Shareholder Cannot Take a Loss on Their Tax Return Based on the Amount in Box 2**

This box must be checked if the reporting corporation reasonably determines that the exchange is part of a transaction described in section 367(a) for which shareholders are required to recognize gain (if any) but are not allowed to claim a loss.







# Instructions for Form 1099-DIV

Section references are to the Internal Revenue Code.

## What's New for 2004

The following changes have been made to the 2004 Form 1099-DIV and these instructions:

- The boxes for post-May 5 capital gain distributions and qualified 5-year gain have been eliminated based on section 301 of the Jobs and Growth Tax Relief and Reconciliation Act of 2003.
- Pending legislation (H.R. 3654; S. 1984) would retroactively amend the holding period rules by changing the 120-day period to a 121-day period and the 180-day period to a 181-day period. To avoid the unnecessary administrative burden of requiring amended Forms 1099-DIV after this bill is enacted, the Commissioner of Internal Revenue has agreed to allow taxpayers to apply the new period as if the Act were presently enacted. See **Qualified Dividends** below.

## An Item To Note

In addition to these specific instructions, you should also use the **2004 General Instructions for Forms 1099, 1098, 5498, and W-2G**. Those general instructions include information about:

- Backup withholding
- Magnetic media and electronic reporting requirements
- Penalties
- Who must file (nominee/middleman)
- When and where to file
- Taxpayer identification numbers
- Statements to recipients
- Corrected and void returns
- Other general topics

You can get the general instructions from the IRS website at [www.irs.gov](http://www.irs.gov) or by calling 1-800-TAX-FORM (1-800-829-3676).

## Specific Instructions for Form 1099-DIV

File **Form 1099-DIV**, Dividends and Distributions, for each person:

- To whom you have paid dividends (including capital gains dividends) and other distributions on stock of \$10 or more,
- For whom you have withheld and paid any foreign tax on dividends and other distributions on stock,
- For whom you have withheld any Federal income tax under the backup withholding rules, or
- To whom you have paid \$600 or more as part of a liquidation.

### Dividends

If you make a payment that may be a dividend but you are unable to determine whether any part of the payment is a dividend by the time you must file Form 1099-DIV, the entire payment must be reported as a dividend. See regulations under section 6042 for a definition of dividends.

### Exceptions

You are not required to report on Form 1099-DIV the following:

1. **Taxable dividend distributions from life insurance contracts.** Taxable dividend distributions from life insurance contracts are reported on **Form 1099-R**, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.

2. **Exempt-interest dividends from regulated investment companies.** Exempt-interest dividends from regulated investment companies retain their tax-exempt status and are not reported on Form 1099-DIV or **Form 1099-INT**, Interest Income (see section 852(b)(5)).

3. **Substitute payments in lieu of dividends.** For payments received by a broker on behalf of a customer in lieu of dividends as a result of a loan of a customer's securities, see **Box 8** in the **2004 Instructions for Form 1099-MISC**.

4. **Payments made to certain payees.** Payments made to certain payees including a corporation, tax-exempt organization, any IRA, U.S. agency, state, the District of Columbia, U.S. possession, or registered securities or commodities dealer are not reported on Form 1099-DIV.



*Certain distributions commonly referred to as "dividends" are actually interest and are to be reported on Form 1099-INT. These include so-called "dividends" on deposit or on share accounts in cooperative banks, credit unions, domestic building and loan associations, domestic and Federal savings and loan associations, and mutual savings banks.*

### Qualified Dividends

Except as provided below, qualified dividends are dividends paid during the tax year from domestic corporations and qualified foreign corporations. For individuals, estates, and trusts, qualified dividends are taxed at a maximum rate of 15% (generally, 5% for individuals whose other income is taxed at the 10% or 15% rate).

**Exceptions.** The following dividends are not qualified dividends.

- Dividends the recipient received on any share of stock held for less than 61 days during the 121-day period that began 60 days before the ex-dividend date (but see the instructions for box 1b on page DIV-2). When determining the number of days the recipient held the stock, you cannot count certain days during which the recipient's risk of loss was diminished. See **Pub. 550**, Investment Income and Expenses, for more details. The ex-dividend date is the first date following the declaration of a dividend on which the purchaser of a stock is not entitled to receive the next dividend payment. When counting the number of days the recipient held the stock, include the day the recipient disposed of the stock but not the day the recipient acquired it.
- Dividends attributable to periods totaling more than 366 days that the recipient received on any share of preferred stock held for less than 91 days during the 181-day period that began 90 days before the ex-dividend date (but see the instructions for box 1b on page DIV-2). When determining the number of days the recipient held the stock, you cannot count certain days during which the recipient's risk of loss was diminished. See **Pub. 550** for more details. Preferred dividends attributable to periods totaling less than 367 days are subject to the 61-day holding period rule above.
- Dividends that relate to payments that the recipient is obligated to make with respect to short sales or positions in substantially similar or related property.
- Dividends paid by a regulated investment company that are not treated as qualified dividend income under section 854.

- Dividends paid by a real estate investment trust that are not treated as qualified dividend income under section 857(c).
- Deductible dividends paid on employer securities. See **Section 404(k) Dividends** below.

**Qualified foreign corporation.** A foreign corporation is a qualified foreign corporation if it is:

1. Incorporated in a possession of the United States or
2. Eligible for benefits of a comprehensive income tax treaty with the United States that the Secretary determines is satisfactory for this purpose and that includes an exchange of information program.

**TIP** For a list of income tax treaties of the United States that (a) are comprehensive, (b) include an information exchange program, and (c) have been determined by the Treasury Department to be satisfactory for this purpose, see Notice 2003-69, 2003-42 I.R.B. 851.

If the foreign corporation does not meet either 1 or 2 above, then it may be treated as a qualified foreign corporation for any dividend paid by the corporation if the stock associated with the dividend paid is readily tradable on an established securities market in the United States. See Notice 2003-71, 2003-43 I.R.B. 922 for more information on when a stock may be considered to be readily tradable.

However, qualified dividends **do not** include dividends paid by foreign entities that in either the taxable year of the distribution or the preceding taxable year were:

- A foreign investment company (section 1246(b)),
- A passive foreign investment company (section 1297), or
- A foreign personal holding company (section 552).

## Section 404(k) Dividends

Report as ordinary dividends in box 1a of Form 1099-DIV dividends distributed under section 404(k) on stock held by an employee stock ownership plan (ESOP) or a tax credit ESOP. If a section 404(k) distribution is made in the same year as a total distribution from the ESOP, you may report the entire amount on Form 1099-R or you may report the dividends on Form 1099-DIV and the remaining amount on Form 1099-R.

**TIP** Section 404(k) dividends are not subject to backup withholding. Also, these dividends are not eligible for the 5% and 15% capital gains rates (see **Exceptions** on page DIV-1).

## RICs and REITs

**Qualified dividends.** If any part of the total ordinary dividends reported in box 1a is qualified dividends, report the qualified dividends in box 1b.

**Dividend payment delayed until January.** If a regulated investment company (RIC) or a real estate investment trust (REIT) declares a dividend in October, November, or December payable to shareholders of record on a specified date in such a month, the dividends are treated as paid by the RIC or REIT and received by the recipients on December 31 of such year as long as the dividends are actually paid by the RIC or REIT during January of the following year. Report the dividends on Form 1099-DIV for the year preceding the January they are actually paid. See sections 852(b)(7) and 857(b)(9) for RICs and REITs respectively.

If a dividend paid in January is subject to backup withholding, withhold when the dividend is actually paid. Therefore, backup withhold in January, deposit the withholding when appropriate, and reflect it on **Form 945**, Annual Return of Withheld Federal Income Tax, for the year withheld. However, since the dividend is reportable on Form 1099-DIV in the prior year, the related backup withholding is also reportable on the prior year Form 1099-DIV.

**Qualified small business stock—RICs.** Under section 1202, a 50% exclusion may be allowed on the gain from the sale or exchange of qualified small business stock issued after August 10, 1993, and held for more than 5 years. If any part of the

capital gain distribution reported in box 2a may qualify for this exclusion (taking into consideration the recipient's holding period), report the gain in box 2c, and furnish the recipient a statement that reports separately for each designated section 1202 gain the:

- Name of the corporation that issued the stock that was sold,
- Date(s) on which the RIC acquired the stock,
- Date sold,
- Recipient's part of the sales price,
- Recipient's part of the RIC's basis in the stock, and
- Amount of the recipient's section 1202 gain.

## Restricted Stock

For information about reporting dividends on restricted stock, see Rev. Procs. 80-11, 1980-1 C.B. 616, and 83-38, 1983-1 C.B. 773, and Rev. Rul. 83-22, 1983-1 C.B. 17.

## Statements to Recipients

If you are required to file Form 1099-DIV, you must provide a statement to the recipient. For information about the requirement to furnish an official or acceptable substitute Form 1099-DIV to recipients in person, by statement mailing, or electronically, see part H in the **2004 General Instructions for Forms 1099, 1098, 5498, and W-2G**.

## 2nd TIN Not.

You may enter an "X" in this box if you were notified by the IRS twice within 3 calendar years that the payee provided an incorrect taxpayer identification number (TIN). If you mark this box, the IRS will not send you any further notices about this account.

**TIP** For more information on the TIN Matching System offered by the IRS, see the 2004 General Instructions for Forms 1099, 1098, 5498, and W-2G.

## Box 1a. Total Ordinary Dividends

Enter dividends, including dividends from money market funds, net short-term capital gains from mutual funds, and other distributions on stock. Include reinvested dividends and section 404(k) dividends. Include as a dividend the amount of the recipient's share of investment expenses that you report in box 5.

**CAUTION** An S corporation reports as dividends on Form 1099-DIV **only** distributions made during 2004 out of accumulated earnings and profits. See section 1368 for more information.

## Box 1b. Qualified Dividends

Enter the portion of the dividends in box 1a that qualify for the 5% and 15% capital gains rates. Include dividends for which it is impractical to determine if the section 1(h)(11)(B)(iii) holding period requirement has been met. See **Qualified Dividends** on page DIV-1.

## Box 2a. Total Capital Gain Distr.

Enter total capital gain distributions (long-term). Include all amounts shown in boxes 2b, 2c, and 2d.

**TIP** For more information about reporting amounts in boxes 2a through 2d, see section 1(h).

## Box 2b. Unrecap. Sec. 1250 Gain

Enter any amount included in box 2a that is an unrecaptured section 1250 gain from certain depreciable real property.

## Box 2c. Section 1202 Gain

Enter any amount included in box 2a that is a section 1202 gain from certain qualified small business stock. See **Qualified small business stock—RICs** above.

## Box 2d. Collectibles (28%) Gain

Enter any amount included in box 2a that is a 28% rate gain from sales or exchanges of collectibles.

### Box 3. Nontaxable Distributions

Enter nontaxable distributions, if determinable.



*File Form 5452, Corporate Report of Nondividend Distributions, if you pay nontaxable distributions to shareholders.*

### Box 4. Federal Income Tax Withheld

Enter backup withholding. For example, if a recipient does not furnish its TIN to you in the manner required, you must backup withhold at a 28% rate on certain dividend payments reported on this form. Use **Form W-9**, Request for Taxpayer Identification Number and Certification, to request the TIN of the recipient. For foreign recipients, see part **F** in the 2004 General Instructions for Forms 1099, 1098, 5498, and W-2G.

### Box 5. Investment Expenses

Enter the recipient's pro rata share of certain amounts deductible by a nonpublicly offered RIC in computing its taxable income. This amount is includible in the recipient's gross income under section 67(c) and must also be included in box 1a. Do not include any investment expenses in box 1b.

### Box 6. Foreign Tax Paid

Enter any foreign tax withheld and paid on dividends and other distributions on stock. A RIC must report only the amount it elects to pass through to the recipient. Report this amount in U.S. dollars.

### Box 7. Foreign Country or U.S. Possession

Enter the name of the foreign country or U.S. possession to which the withheld tax applies.



*Boxes 8 and 9 apply only to corporations in partial or complete liquidation. Do not include these amounts in box 1a or 1b.*

### Box 8. Cash Liquidation Distr.

Enter cash distributed as part of a liquidation.

### Box 9. Noncash Liquidation Distr.

Enter noncash distributions made as part of a liquidation. Show the fair market value as of the date of distribution.





# 2004

# Instructions for Form 1099-G

Section references are to the Internal Revenue Code.

## What's New for 2004

The backup withholding rate has decreased to 28%.

## An Item To Note

In addition to these specific instructions, you should also use the **2004 General Instructions for Forms 1099, 1098, 5498, and W-2G**. Those general instructions include information about:

- Backup withholding
- Magnetic media and electronic reporting requirements
- Penalties
- Who must file (nominee/middleman)
- When and where to file
- Taxpayer identification numbers
- Statements to recipients
- Corrected and void returns
- Other general topics

You can get the general instructions from the IRS website at [www.irs.gov](http://www.irs.gov) or by calling 1-800-TAX-FORM (1-800-829-3676).

## Specific Instructions for Form 1099-G

File **Form 1099-G**, Certain Government Payments, if as a unit of a Federal, state, or local government, you made payments of unemployment compensation; state or local income tax refunds, credits, or offsets; taxable grants; or agricultural payments. The officer or employee of the government unit having control of the payments (or the designated officer or employee) must file Form 1099-G.

### Statements to Recipients

If you are required to file Form 1099-G, you must provide a statement to the recipient. Furnish a copy of Form 1099-G or an acceptable substitute statement to each recipient, except as explained below under **Box 2. State or Local Income Tax Refunds, Credits, or Offsets**. Also, see part **H** in the **2004 General Instructions for Forms 1099, 1098, 5498, and W-2G**.

### Box 1. Unemployment Compensation

Enter payments of \$10 or more in unemployment compensation including Railroad Retirement Board payments for unemployment. Enter the total amount before any income tax was withheld. If you withhold Federal income tax at the request of the recipient, enter it in box 4.

### Box 2. State or Local Income Tax Refunds, Credits, or Offsets

Enter refunds, credits, or offsets of state or local income tax of \$10 or more you made to recipients. If recipients deducted the tax paid to a state or local government on their Federal income tax returns, any refunds, credits, or offsets may be taxable to them. You are not required to furnish a copy of Form 1099-G or a substitute statement to the recipient if you can determine that the recipient did not claim itemized deductions on the recipient's Federal income tax return for the tax year giving rise to the refund, credit, or offset. However, you must file Form 1099-G with the IRS in all cases.

A tax on dividends, a tax on net gains from the sale or exchange of a capital asset, and a tax on the net taxable income of an unincorporated business are taxes on gain or profit rather than on gross receipts. Therefore, they are income taxes, and any refund, credit, or offset of \$10 or more of these taxes is reportable on Form 1099-G. In the case of the

dividends tax and the capital gains tax, if you determine that the recipient did not itemize deductions, as explained above, you are not required to furnish a Form 1099-G or substitute statement to the recipient. However, in the case of the tax on unincorporated businesses, you must furnish a Form 1099-G or substitute statement to the recipient in all cases, as this is a tax that applies exclusively to income from a trade or business. See **Box 8. Trade or Business Income (Checkbox)**, below and Rev. Rul. 86-140, 1986-2 C.B. 195.

If you pay **interest** of \$600 or more on the refund, you must file **Form 1099-INT**, Interest Income, and furnish a statement to the recipient. For interest payments of less than \$600, you may choose to enter the amount with an appropriate designation such as "Interest Income" in the blank box on Copy B of the Form 1099-G.

### Box 3. Box 2 Amount Is For Tax Year

No entry is required in box 3 if the refund, credit, or offset is for the 2003 tax year. If it is for any other tax year, enter the **year** for which the refund, credit, or offset was made. Also, if the refunds, credits, or offsets are for more than 1 tax year, report the amount for each year on a separate Form 1099-G. Use the format "YYYY" to make the entry in this box. For example, enter 2002, not '02.

### Box 4. Federal Income Tax Withheld

**Backup withholding.** Enter backup withholding at a 28% rate on payments required to be reported in box 6 or 7. For example, if a recipient does not furnish its taxpayer identification number (TIN) to you, you must backup withhold.

**Voluntary withholding.** Enter any voluntary Federal withholding on unemployment compensation, Commodity Credit Corporation loans, and certain crop disaster payments. If you withheld state income tax, you may label it and report it on the statement to the recipient. However, you are not required to report state withholding to the IRS.

### Box 5. Blank Box

Make no entry in this box.

### Box 6. Taxable Grants

Enter any amount of a taxable grant administered by a Federal, state, or local program to provide subsidized energy financing or grants for projects designed to conserve or produce energy, but only with respect to section 38 property or a dwelling unit located in the United States. Also, enter any amount of a taxable grant administered by an Indian tribal government.

Report amounts of other taxable grants of \$600 or more. A Federal grant is ordinarily taxable unless stated otherwise in the legislation authorizing the grant. **Do not** report scholarship or fellowship grants. See **Scholarships** in the **Instructions for Form 1099-MISC**.

### Box 7. Agriculture Payments

Enter USDA agricultural subsidy payments made during the year. If you are a nominee that received subsidy payments for another person, file Form 1099-G to report the actual owner of the payments, and report the amount of the payments in box 7.

### Box 8. Trade or Business Income (Checkbox)

If the amount in box 2 is a refund, credit, or offset attributable to an income tax that applies exclusively to income from a trade or business and is not a tax of general application, enter an "X" in this box.



# Instructions for Form 1099-H

Section references are to the Internal Revenue Code.

## What's New for 2004

Guidance has been issued relieving health insurance providers from preparing **Form 1099-H**, Health Coverage Tax Credit (HCTC) Advance Payments. The Department of Treasury is using the HCTC Transaction Center to administer the HCTC program. The HCTC Transaction Center will file and furnish the information returns required by section 6050T unless the health insurance provider notifies the Transaction Center that the provider will file and furnish information returns and statements. This relief applies beginning with returns and statements due in 2004. See **Who Must File** below.

### An Item To Note

In addition to these specific instructions, you should also use the **2004 General Instructions for Forms 1099, 1098, 5498, and W-2G**. Those general instructions include information about:

- Backup withholding
- Magnetic media and electronic reporting requirements
- Penalties
- Who must file (nominee/middleman)
- When and where to file
- Taxpayer identification numbers
- Statements to recipients
- Corrected and void returns
- Other general topics

You can get the general instructions from the IRS website at [www.irs.gov](http://www.irs.gov) or by calling 1-800-TAX-FORM (1-800-829-3676).

## Specific Instructions for Form 1099-H

File **Form 1099-H**, Health Coverage Tax Credit (HCTC) Advance Payments, with the IRS by February 28, 2005, if you received in the course of your trade or business any advance payments during the calendar year of qualified health insurance payments for the benefit of eligible trade adjustment assistance (TAA), alternative TAA, or Pension Benefit Guaranty Corporation (PBGC) recipients and their qualifying family members.

### Who Must File

Section 6050T requires that providers of qualified health insurance coverage (section 35(e)) file Forms 1099-H with the IRS reporting the advance payments the providers receive from the Department of the Treasury on behalf of eligible individuals. You must also furnish a statement to the eligible recipient.

However, Notice 2004-47, which is on page 48 of Internal Revenue Bulletin 2004-29 at [www.irs.gov/pub/irs-irbs/irb04-29.pdf](http://www.irs.gov/pub/irs-irbs/irb04-29.pdf), provides that the HCTC Transaction Center, as an administrator of the Health Coverage Tax Credit (HCTC), will file the required returns and furnish statements to the recipients **unless** the provider elects to file and furnish information returns and statements on its own. Contact the HCTC Transaction Center for this purpose by calling 1-866-628-4282. Unless the

provider notifies the HCTC Transaction Center of its intent to file information returns and furnish statements, the provider will be considered to have elected to have the Transaction Center file Form 1099-H and furnish statements to recipients in satisfying section 6050T filing requirements.

For more information on the requirement to provide a statement to the recipient, see **Statements to Recipients** below.

### Statements to Recipients

If required to file Form 1099-H, a statement must be furnished to the recipient. You or the Transaction Center, if elected, must furnish a copy of Form 1099-H or an acceptable substitute statement to each recipient. Also, see part **H** in the **2004 General Instructions for Forms 1099, 1098, 5498, and W-2G**.

### Penalties

**Waiver of penalties.** Section 6724(a) authorizes the IRS to waive any penalties under sections 6721 and 6722 for failure to comply with the reporting requirements of section 6050T if such failures resulted from reasonable cause and not willful neglect. In the case of providers that elect to allow the HCTC Transaction Center to file and furnish Forms 1099-H, the IRS will not assert the penalties imposed by sections 6721 and 6722 regarding the reporting of advance payments made to providers. For providers that do not elect to allow the HCTC Transaction Center to file and furnish Forms 1099-H, the normal rules for seeking a penalty waiver under section 6724(a) apply. See Regulations section 301.6724-1.

For more information on penalties, see page GEN-4 in the 2004 General Instructions for Forms 1099, 1098, 5498, and W-2G.

### Box 1. Amount of HCTC Advance Payments

Enter the total amount of advance payments of health insurance premiums received on behalf of the recipient for the period January 1, 2004, through December 31, 2004. The amount received cannot exceed 65% of the total health insurance premium for the individual.

### Box 2. No. of Months HCTC Advance Payments Received

Enter the number of months for which payments were received on behalf of the recipient. This number cannot be more than 12.

### Boxes 3-14. Amount of Advance Payment(s) Included in Box 1

Enter the amount of the advance payment received for each month in the applicable box. You may receive these payments prior to the month for which they are paid. Be sure to enter the amounts in the correct box. For example, if you receive an advance payment of \$1,000 for TAA "X" on December 12, 2004, for January 2005 medical insurance premium, then report the \$1,000 payment on Form 1099-H for January 2005, not December 2004.







# Instructions for Forms 1099-INT and 1099-OID

Section references are to the Internal Revenue Code unless otherwise noted.

## What's New for 2004

**Backup withholding.** Recent legislation reduced the backup withholding rate to 28%.

## An Item To Note

**General instructions.** In addition to these specific instructions, you should also use the **2004 General Instructions for Forms 1099, 1098, 5498, and W-2G**. Those general instructions include information about:

- Backup withholding
- Magnetic media and electronic reporting requirements
- Penalties
- Who must file (nominee/middleman)
- When and where to file
- Taxpayer identification numbers
- Statements to recipients
- Corrected and void returns
- Other general topics

You can get the general instructions from the IRS website at [www.irs.gov](http://www.irs.gov) or by calling 1-800-TAX-FORM (1-800-829-3676).

## Specific Instructions for Form 1099-INT

File **Form 1099-INT**, Interest Income, for each person

1. To whom you paid amounts reportable in boxes 1 and 3 of at least \$10 (or at least \$600 of interest paid in the course of your trade or business described in the instructions for **Box 1. Interest Income** below),

2. For whom you withheld and paid any foreign tax on interest, or

3. From whom you withheld (and did not refund) any Federal income tax under the backup withholding rules regardless of the amount of the payment.

Report only interest payments made in the course of your trade or business including Federal, state, and local government agencies and activities deemed nonprofit, or for which you were a nominee/middleman. Report interest that is treated as original issue discount (OID) in box 1 or 6 of **Form 1099-OID**, Original Issue Discount, not on Form 1099-INT.

**Canadian nonresident aliens.** If you pay U.S. bank deposit interest of at least \$10 to a nonresident alien who resides in Canada, you may have to report the interest on **Form 1042-S**, Foreign Person's U.S. Source Income Subject to Withholding. This interest is not subject to backup withholding. See the **Instructions for Form 1042-S**.

**Exceptions to reporting.** No Form 1099-INT is required to be filed for payments made to exempt recipients or for interest excluded from reporting.

**Exempt recipients.** You are not required to file Form 1099-INT for payments made to certain payees including but not limited to a corporation, a tax-exempt organization, any IRA or Archer MSA, a U.S. agency, a state, the District of Columbia, a U.S. possession, a registered securities or commodities dealer, nominees or custodians, brokers, or notional principal contract (swap) dealers. For additional exempt recipients, see Regulations section 1.6049-4 for more information.

**Interest excluded from reporting.** You are not required to file Form 1099-INT for interest on an obligation issued by an individual, interest on a tax-exempt obligation, interest on amounts from sources outside the United States paid outside the United States by a non-U.S. payer or non-U.S. middleman,

certain portfolio interest, interest on an obligation issued by an international organization and paid by that organization, and payments made to a foreign beneficial owner or foreign payee. See Regulations section 1.6049-5 for more information.

**Other exception.** Do not report tax-exempt or tax-deferred interest, such as interest on municipal bonds or interest that is earned but not distributed from an IRA. Also, an exempt-interest dividend from a regulated investment company (RIC) retains its tax-exempt status and is not reported on Form 1099-INT or **Form 1099-DIV**, Dividends and Distributions.

**When is a payment made?** Generally, interest is paid when it is credited or set apart for a person without any substantial limitation or restriction as to the time, manner, or condition of payment. The interest must be made available so that it may be drawn on at any time and its receipt brought within the control and disposition of the person.

For payments made on obligations subject to transactional reporting (e.g., savings bonds, interest coupons, and other demand obligations), interest is paid at the time the obligation is presented for payment. For example, interest on a coupon detached from a bond is paid when it is presented for payment.

**Reporting Interest and OID.** If you are reporting interest and original issue discount (OID) on any obligation, you may report both the interest and the OID on Form 1099-OID. It is not necessary to file both Forms 1099-INT and 1099-OID. On Form 1099-OID, report the interest in box 2 and the OID in box 1 or 6. However, you may choose to report the interest on Form 1099-INT and the OID on Form 1099-OID.

**Statements to recipients.** If you are required to file Form 1099-INT, you must furnish a statement to the recipient. For more information about the requirement to furnish an official form or acceptable substitute statement to recipients in person, by statement mailing, or electronically, see part **H** in the **2004 General Instructions for Forms 1099, 1098, 5498, and W-2G**. If you have furnished Forms 1099-INT to a recipient for amounts received during the year at the time of the transaction, such as you might have done for window transactions, do not include these same amounts in a Form 1099-INT furnished to the same recipient for other payments during the year.

**2nd TIN not.** You may enter an "X" in this box if you were notified by the IRS twice within 3 calendar years that the payee provided an incorrect taxpayer identification number (TIN). If you mark this box, the IRS will not send you any further notices about this account.



For information on the TIN matching system offered by the IRS, see the **2004 General Instructions for Forms 1099, 1098, 5498, and W-2G**.

**Payer's RTN (optional).** If you are a financial institution that wishes to participate in the program for direct deposit of refunds, you may enter your routing and transit number (RTN).

## Box 1. Interest Income

Enter interest not included in box 3. Include amounts of \$10 or more, whether or not designated as interest, that are paid or credited to the person's account by savings and loan associations, mutual savings banks not having capital stock represented by shares, building and loan associations, cooperative banks, homestead associations, credit unions, or similar organizations. Include interest on bank deposits, accumulated dividends paid by a life insurance company, indebtedness (including bonds, debentures, notes, and certificates other than those of the U.S. Treasury) issued in

registered form or of a type offered to the public, or amounts from which you withheld Federal income tax or foreign tax. In addition, report interest of \$10 or more accrued to a real estate mortgage investment conduit (REMIC) or financial asset securitization investment trust (FASIT) regular interest holder or paid to a collateralized debt obligation (CDO) holder, as explained below.

**Also include interest of \$600 or more paid in the course of your trade or business** not meeting the above criteria, such as interest on delayed death benefits paid by a life insurance company, interest received with damages, interest on a state or Federal income tax refund, or interest attributable to a swap with significant nonperiodic payments.

Include in box 1 any accrued interest on bonds sold between interest dates (or on a payment date). Also show OID on short-term obligations of 1 year or less and interest on all bearer certificates of deposit.

**Do not** include in box 1 interest on tax-free covenant bonds or dividends from money market funds (which are reportable on Form 1099-DIV). Do not include any description in box 1, but if you wish to show a description, use the blank box above box 1.

## Box 2. Early Withdrawal Penalty

Enter interest or principal forfeited because of an early withdrawal of time deposits, such as an early withdrawal from a certificate of deposit (CD), that is deductible from gross income by the recipient. Do not reduce the amount reported in box 1 by the amount of the forfeiture. For detailed instructions for determining the amount of forfeiture deductible by the depositor, see Rev. Ruls. 75-20, 1975-1 C.B. 29, and 75-21, 1975-1 C.B. 367.

## Box 3. Interest on U.S. Savings Bonds and Treas. Obligations

Enter interest on U.S. Savings Bonds, Treasury bills, Treasury notes, and Treasury bonds. Do not include in box 1.

If you make payment on a U.S. Savings Bond or other U.S. obligation on which interest is reportable, enter **your** name, address, and Federal identification number on Form 1099-INT and **Form 1096**, Annual Summary and Transmittal of U.S. Information Returns, not those of the U.S. Treasury Department or the Bureau of Public Debt.

## Box 4. Federal Income Tax Withheld

Enter backup withholding. For example, if a recipient does not furnish its TIN to you in the manner required, you must backup withhold at a 28% rate on payments required to be reported in box 1 (which may be reduced by the amount reported in box 2) and box 3 on this form.

For information on requesting the recipient's TIN, see part F in the General Instructions for Forms 1099, 1098, 5498, and W-2G.

## Box 5. Investment Expenses

For single-class REMICs only, see **Box 5. Investment Expenses** under **Rules for REMICs, FASITs, and Issuers of CDOs** below.

## Box 6. Foreign Tax Paid

Enter any foreign tax withheld and paid on interest. Report this amount in U.S. dollars.

## Box 7. Foreign Country or U.S. Possession

Enter the name of the foreign country or U.S. possession to which the withheld tax applies.

## Rules for REMICs, FASITs, and Issuers of CDOs

REMICs, holders of ownership interests in FASITs, issuers of CDOs, and any broker or middleman who holds as a nominee a REMIC or FASIT regular interest or CDO must file Form 1099-INT. The form is used to report interest of \$10 or more, other than OID, accrued to a REMIC or FASIT regular interest holder during the year or paid to a holder of a CDO. If you are also reporting OID, this interest and the OID can be reported on Form 1099-INT. You do not have to file both Forms 1099-INT and 1099-OID.

You are not required to file or issue Form 1099-INT for exempt recipients including but not limited to the following:

- A corporation.
- A broker.
- A middleman/nominee.
- A financial institution.
- Any IRA or Archer MSA.
- A tax-exempt organization.

For additional exempt recipients, see Regulations section 1.6049-7(c).

## Box 1. Interest Income

Report in box 1 the amount of interest, other than OID, accrued to each REMIC or FASIT regular interest holder or paid to a CDO holder for the period during the year for which the return is made. If you are a single-class REMIC (as defined in Temporary Regulations section 1.67-3T(a)(2)(ii)(B)), increase the amount otherwise reportable in box 1 by the regular interest holder's share of investment expenses of the REMIC for the year. No amount should be reported in box 3.

## Box 5. Investment Expenses

Enter the regular interest holder's pro rata share of investment expenses deductible by a single-class REMIC.

**Statements to holders.** For each Form 1099-INT you are required to file, you must furnish a statement to the REMIC or FASIT regular interest or CDO holder identified on the form. The statement must contain the information shown on Form 1099-INT, including the legend shown on Copy B of the official Form 1099-INT, and an indication that these items are being furnished to the IRS. The statement also must show the information specified in Regulations section 1.6049-7(f)(2)(i). In addition, the statement furnished by a REMIC must show, for each calendar quarter, the information specified in Regulations section 1.6049-7(f)(3). Also see Regulations section 1.6049-7(f)(3)(ii) for information that may be required to be reported to a real estate investment trust (REIT) that holds a REMIC regular interest.

A single-class REMIC (as defined in Temporary Regulations section 1.67-3T(a)(2)(ii)(B)) must include in the statement the investment expenses paid or accrued during each calendar quarter by the REMIC for which the REMIC is allowed a deduction under section 212 and the proportionate share of those investment expenses allocated to the regular interest holder.

The statement must be furnished to holders by **March 15**. To meet the statement requirement, you may furnish a copy of Form 1099-INT and a separate statement containing the additional information to the REMIC or FASIT regular interest or CDO holder.

For information about reporting income to REMIC residual interest holders, see the instructions for **Schedule Q (Form 1066)**, Quarterly Notice to Residual Interest Holder of REMIC Taxable Income or Net Loss Allocation, in the separate **Instructions for Form 1066**.

## Form 8811 and reporting by brokers or middlemen.

REMICs, holders of ownership interests in FASITs, and issuers of CDOs must also file **Form 8811**, Information Return for Real Estate Mortgage Investment Conduits (REMICs) and Issuers of Collateralized Debt Obligations, within 30 days after the start-up date of the REMIC or issue date of a FASIT regular interest or CDO. The IRS will use the information on Forms 8811 to update **Pub. 938**, Real Estate Mortgage Investment Conduits (REMICs) Reporting Information, for use by certain brokers, middlemen, corporations, and others specified in Regulations section 1.6049-7(e)(4). Pub. 938 is available only on the IRS website at [www.irs.gov](http://www.irs.gov).

For the requirements that a REMIC or CDO issuer (including the holder of the ownership interest in a FASIT) or a broker or middleman who holds a REMIC or FASIT regular interest or a CDO furnish certain information on request, see Regulations sections 1.6049-7(e) and 1.6049-7(f)(7).

For more information about FASITs, see sections 860H through 860L.

## Specific Instructions for Form 1099-OID

File **Form 1099-OID**, Original Issue Discount, if the original issue discount (OID) includible in gross income is at least \$10 and you are any of the following:

- An issuer with any bond outstanding or other evidence of indebtedness in registered or bearer form issued with OID;
- An issuer of a certificate of deposit (CD) made, purchased, or renewed after 1970 if the CD has OID and a term of more than 1 year (see **Caution** below);
- A financial institution having other deposit arrangements, such as time deposits or bonus-savings plans, if the arrangements have OID and a term of more than 1 year;
- A broker or other middleman holding an OID obligation, including CDs, as nominee for the actual owner; or
- A real estate mortgage investment conduit (REMIC), a holder of an ownership interest in a financial asset securitization investment trust (FASIT), or an issuer of a collateralized debt obligation (CDO).

Also, file Form 1099-OID for any person for whom you withheld and paid any foreign tax on OID or from whom you withheld (and did not refund) any Federal income tax under the backup withholding rules even if the amount of the OID is less than \$10.

**Original issue discount.** OID is the excess of an obligation's stated redemption price at maturity over its issue price (acquisition price for a stripped bond or coupon). A discount of less than  $\frac{1}{4}$  of 1% of the stated redemption price at maturity, multiplied by the number of full years from the date of issue to maturity, is considered to be zero.

**Reporting OID.** You must prepare a Form 1099-OID for each person who is a holder of record of the obligation if the OID includible in the holder's gross income is at least \$10.

For a discussion of the reporting requirements for REMICs, FASITs, and CDOs, see the instructions on page INT-4.

Ordinarily, you will file only one Form 1099-OID for the depositor or holder of a particular obligation for the calendar year. If a person holds more than one discount obligation, issue a separate Form 1099-OID for each obligation. However, if a person holds more than one certificate of the same issue for the same period of time during the calendar year, and if Form 1099-OID amounts are proportional, you may treat all such certificates as one discount obligation and file a single Form 1099-OID.

For information about how to compute OID, see sections 1271-1275 and their regulations.

If you are a **broker** or **middleman** who holds a bank CD as nominee, whether or not you sold the CD to the owner, you must determine the amount of OID includible in the income of the owner, if any, and report it on Form 1099-OID.

**Pub. 1212**, List of Original Issue Discount Instruments, contains information on certain outstanding publicly offered discount obligations. It is available on the IRS website at [www.irs.gov](http://www.irs.gov).

Issuers of certain publicly offered debt instruments having OID must file **Form 8281**, Information Return for Publicly Offered Original Issue Discount Instruments, within 30 days after the date of issuance. The information provided on that form will enable the IRS to update Pub. 1212. See Form 8281 for details.

**Exceptions.** You are not required to file Form 1099-OID for payments made to certain payees including a corporation, a tax-exempt organization, any IRA, an Archer MSA or Medicare+Choice MSA, a U.S. agency, a state, the District of Columbia, a U.S. possession, or a registered securities or commodities dealer.



**Report interest on U.S. Savings Bonds on Form 1099-INT. Also report OID on obligations with a term of 1 year or less on Form 1099-INT.**

**Reporting Interest and OID.** If you are reporting stated interest and OID on an obligation, you may report both the interest and the OID on Form 1099-OID. It is not necessary to file both Forms 1099-INT and 1099-OID. On Form 1099-OID, report the interest in box 2 and the OID in box 1 or 6. However,

you may choose to report the interest on Form 1099-INT and the OID on Form 1099-OID.

**Statements to recipients.** If you are required to file Form 1099-OID, you must furnish a statement to the recipient. For more information about the requirement to furnish an official form or acceptable substitute statement to recipients in person, by statement mailing, or electronically, see part **H** in the **General Instructions for Forms 1099, 1098, 5498, and W-2G**.

**2nd TIN not.** You may enter an "X" in this box if you were notified by the IRS twice within 3 calendar years that the payee provided an incorrect taxpayer identification number (TIN). If you mark this box, the IRS will not send you any further notices about this account.



*For information on the TIN matching system offered by the IRS, see the 2004 General Instructions for Forms 1099, 1098, 5498, and W-2G.*

### Box 1. Original Issue Discount for 2004

Report the OID on the obligation for the part of the year it was owned by the record holder. Do not include the amount reported in box 6. For a discussion of REMICs, FASITs, and CDOs, see the instructions on page INT-4.

### Box 2. Other Periodic Interest

Enter any stated interest (that is not OID) paid or credited on this obligation during the year. However, you may report any stated interest that is not OID on Treasury Inflation-Indexed Securities in box 3 of Form 1099-INT rather than in box 2 of Form 1099-OID. Interest reported here must not be reported on Form 1099-INT. For a discussion of REMICs, FASITs, and CDOs, see the instructions on page INT-4.

### Box 3. Early Withdrawal Penalty

Enter interest or principal forfeited because of an early withdrawal, such as an early withdrawal from a CD, that is deductible from gross income by the recipient. Do not reduce the amounts in boxes 1 and 2 by the amount of the forfeiture. For detailed instructions for determining the amount of forfeiture deductible by the holder, see Rev. Ruls. 75-20, 1975-1 C.B. 29, and 75-21, 1975-1 C.B. 367.

### Box 4. Federal Income Tax Withheld

Enter backup withholding. For example, if a recipient does not furnish its TIN to you in the manner required, you must backup withhold at a 28% rate. The 28% rate applies to amounts required to be reported in boxes 1, 2, and 6 but limited to the cash paid on these obligations. Before applying the 28% rate, you may reduce the amounts reported in boxes 1 and 2 by the amount reported in box 3.

For information on requesting the recipient's TIN, see part **F** in the General Instructions for Forms 1099, 1098, 5498, and W-2G.

### Box 5. Description

Enter the CUSIP (Committee on Uniform Security Identification Procedures) number, if any. If there is no CUSIP number, enter the abbreviation for the stock exchange, the abbreviation for the issuer used by the stock exchange, the coupon rate, and the year of maturity (e.g., NYSE XYZ 12 $\frac{1}{2}$  25). If the issuer of the obligation is other than the payer, show the name of the issuer.

### Box 6. Original Issue Discount on U.S. Treasury Obligations

Enter the OID on a U.S. Treasury obligation for the part of the year it was owned by the record holder. Do not include this amount in box 1. You may enter any stated interest on the Treasury obligation in box 2.

If you make payment on a U.S. Treasury obligation on which OID is reportable, enter **your** name, address, and Federal identification number on Forms 1099-OID and 1096, not those of the U.S. Treasury Department or the Bureau of Public Debt.

### Box 7. Investment Expenses

For single-class REMICs only, see **Box 7. Investment Expenses** under **Rules for REMICs, FASITs, and Issuers of CDOs** on page INT-4.



## Rules for REMICs, FASITs, and Issuers of CDOs

REMICs, holders of ownership interests in FASITs, issuers of CDOs, and any broker or middleman who holds as a nominee a REMIC or FASIT regular interest or CDO must file Form 1099-OID. The form is used to report OID of \$10 or more accrued to a REMIC or FASIT regular interest holder or to a holder of a CDO. Also use Form 1099-OID to report other interest accrued to a REMIC or FASIT regular interest holder during the year or paid to a holder of a CDO. You may use Form 1099-INT rather than Form 1099-OID to report interest for an instrument issued with OID if no OID is includible in the regular interest holder's or CDO holder's income for the year.

You are not required to file or issue Form 1099-OID for exempt recipients including but not limited to the following:

- A corporation.
- A broker.
- A middleman/nominee.
- A financial institution.
- Any IRA or Archer MSA.
- A tax-exempt organization.

For additional exempt recipients, see Regulations section 1.6049-7(c).

### Box 1. Original Issue Discount for 2004

Report in box 1 the aggregate amount of OID includible in the gross income of each REMIC or FASIT regular interest or CDO holder for the period during the year for which the return is made. No amount should be reported in box 6.

### Box 2. Other Periodic Interest

Report in box 2 any amount of interest, other than OID, accrued to each REMIC or FASIT regular interest holder or paid to each CDO holder. If you are a single-class REMIC (as defined in Temporary Regulations section 1.67-3T(a)(2)(ii)(B)), increase the amount otherwise reportable in box 2 by the regular interest holder's share of investment expenses of the REMIC for the year.

### Box 7. Investment Expenses

Enter the regular interest holder's pro rata share of investment expenses deductible by a single-class REMIC.

**Statements to holders.** For each Form 1099-OID you are required to file, you must furnish a statement to the REMIC or FASIT regular interest or CDO holder identified on the form. The statement must contain the information shown on Form 1099-OID, including the legend shown on Copy B of the official Form 1099-OID, and an indication that these items are being

furnished to the IRS. The statement also must show the information specified in Regulations section 1.6049-7(f)(2)(ii). In addition, the statement furnished by a REMIC must show, for each calendar quarter, the information specified in Regulations section 1.6049-7(f)(3). Also see Regulations section 1.6049-7(f)(3)(ii) for information that may be required to be reported to a real estate investment trust (REIT) that holds a REMIC regular interest.

A single-class REMIC (as defined in Temporary Regulations section 1.67-3T(a)(2)(ii)(B)) must include in the statement the investment expenses paid or accrued during each calendar quarter by the REMIC for which the REMIC is allowed a deduction under section 212 and the proportionate share of those investment expenses allocated to the regular interest holder.

The statement must be furnished to holders by **March 15**. To meet the statement requirement, you may furnish a copy of Form 1099-OID and a separate statement containing the additional information to the REMIC or FASIT regular interest or CDO holder.

For information about reporting income to REMIC residual interest holders, see the instructions for **Schedule Q (Form 1066)**, Quarterly Notice to Residual Interest Holder of REMIC Taxable Income or Net Loss Allocation, in the separate **Instructions for Form 1066**.

### Form 8811 and reporting by brokers or middlemen.

REMICs, holders of ownership interests in FASITs, and issuers of CDOs must also file **Form 8811**, Information Return for Real Estate Mortgage Investment Conduits (REMICs) and Issuers of Collateralized Debt Obligations, within 30 days after the start-up date of the REMIC or issue date of a FASIT regular interest or CDO. The IRS will use the information on Forms 8811 to update **Pub. 938**, Real Estate Mortgage Investment Conduits (REMICs) Reporting Information, for use by certain brokers, middlemen, corporations, and others specified in Regulations section 1.6049-7(e)(4). Pub. 938 is available only on the IRS website at [www.irs.gov](http://www.irs.gov).

For the requirements that a REMIC or CDO issuer (including the holder of the ownership interest in a FASIT) or a broker or middleman who holds a REMIC or FASIT regular interest or a CDO furnish certain information on request, see Regulations sections 1.6049-7(e) and 1.6049-7(f)(7).

For more information about FASITs, see sections 860H through 860L.

# Instructions for Form 1099-LTC

Section references are to the Internal Revenue Code.

## An Item To Note

In addition to these specific instructions, you should also use the **2004 General Instructions for Forms 1099, 1098, 5498, and W-2G**. Those general instructions include information about:

- Backup withholding
- Magnetic media and electronic reporting requirements
- Penalties
- Who must file (nominee/middleman)
- When and where to file
- Taxpayer identification numbers
- Statements to recipients
- Corrected and void returns
- Other general topics

You can get the general instructions from the IRS website at [www.irs.gov](http://www.irs.gov) or by calling 1-800-TAX-FORM (1-800-829-3676).

## Specific Instructions for Form 1099-LTC

File **Form 1099-LTC**, Long-Term Care and Accelerated Death Benefits, if you pay any long-term care benefits.

### Long-Term Care Benefits

Long-term care benefits means—

1. Any payments made under a product that is advertised, marketed, or offered as long-term care insurance (whether qualified or not) and
2. Accelerated death benefits (excludable in whole or in part from gross income under section 101(g)) paid under a life insurance contract or paid by a viatical settlement provider.

### Who Must File

File Form 1099-LTC if you paid any long-term care benefits, including accelerated death benefits. Payers include insurance companies, governmental units, and viatical settlement providers.

### Viatical Settlement Providers

A viatical settlement provider is any person who—

1. Is regularly engaged in the trade or business of purchasing or taking assignments of life insurance contracts on the lives of terminally or chronically ill individuals and
2. Is licensed in the state where the insured lives. If licensing is not required in the state, the provider must meet other requirements (including those below) depending on whether the insured is terminally or chronically ill.

- If the insured is terminally ill, the provider must meet the requirements of sections 8 and 9 of the Viatical Settlements Model Act of the National Association of Insurance Commissioners (NAIC), relating to disclosure and general rules. The provider must also meet the requirements of the Model Regulations of the NAIC for evaluating the reasonableness of amounts paid in viatical settlement transactions with terminally ill individuals.
- If the insured is chronically ill, the provider must meet requirements similar to those of sections 8 and 9 of the Viatical Settlements Model Act of the NAIC and must also meet any standards of the NAIC for evaluating the reasonableness of

amounts paid in viatical settlement transactions with chronically ill individuals.



*However, if a state enacts a licensing requirement but does not permit viatical settlement providers to engage in business until the licenses are granted, the provider will not be considered as licensed under section 101(g)(2)(B)(i)(I). See Rev. Rul. 2002-82, 2002-51 I.R.B. 978.*

### Qualified Long-Term Care Insurance Contract

A contract issued after 1996 is a qualified long-term care insurance contract if it meets the requirements of section 7702B, including the requirement that the insured must be a chronically ill individual (see **Chronically ill individual** below). A contract issued before 1997 generally is treated as a qualified long-term care insurance contract if it met state law requirements for long-term care insurance contracts and it has not been materially changed.

### Accelerated Death Benefits

An accelerated death benefit is any amount paid under a life insurance contract for an insured individual who is terminally or chronically ill. It also includes any amount paid by a viatical settlement provider for the sale or assignment of a death benefit under a life insurance contract for a chronically or terminally ill individual.

### Chronically ill individual

A chronically ill individual is someone who has been certified (at least annually) by a licensed health care practitioner as—

1. Being unable to perform, without substantial assistance from another individual, at least two daily living activities (eating, toileting, transferring, bathing, dressing, and continence) for at least 90 days due to a loss of functional capacity; or
2. Having a level of disability similar to the level of disability in 1 above (as prescribed by regulations); or
3. Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment.

### Terminally ill individual

A terminally ill individual is someone who has been certified by a physician as having an illness or physical condition that can reasonably be expected to result in death in 24 months or less.

### Reporting

Report payments only if the policyholder is an individual. Reportable payments are those made to the policyholder, to the insured, or to a third party.

You may report benefits paid from each contract on a separate Form 1099-LTC. At your option, you may aggregate benefits paid under multiple contracts on one Form 1099-LTC if the same information is reportable on the form for each contract (other than the amount of benefits paid).

### Policyholder

The policyholder is the individual who owns the contract, including the owner of a contract sold or assigned to a viatical settlement provider. In the case of a group contract, the term policyholder includes the certificate holder (or similar participant). You must report long-term care benefits to the

policyholder even if the payments were made to the insured or to a third party (e.g., a nursing home, caretaker, or physician). The policyholder also may be the insured.

Enter the name, address, and taxpayer identification number (TIN) of the policyholder on Form 1099-LTC. If the policyholder is not an individual, no reporting is required.

**Insured**

The insured is the chronically or terminally ill individual on whose behalf long-term care benefits are paid.

Enter the name, address, and TIN of the insured on Form 1099-LTC.

**Statement to Policyholder and Insured**

If you are required to file Form 1099-LTC, you must furnish a statement (or acceptable substitute) to both the policyholder and to the insured as shown.

IF the statement is for the ...	THEN use...
Policyholder	Copy B
Insured	Copy C
Policyholder and the policyholder is the insured	Copy B (Copy C is optional)

For more information about the requirement to furnish a statement to the policyholder and to the insured, see part **H** in the **General Instructions for Forms 1099, 1098, 5498, and W-2G**.

**Box 1. Gross Long-Term Care Benefits Paid**

Enter the gross long-term care benefits paid this year (other than accelerated death benefits). These benefits are all amounts paid out on a per diem (or other periodic) basis or on a reimbursed basis. It includes amounts paid to the insured, to the policyholder, and to third parties. You are not required to determine whether any benefits are taxable or nontaxable.

**Box 2. Accelerated Death Benefits Paid**

Enter the gross accelerated death benefits paid under a life insurance contract this year to or on behalf of an insured who has been certified as terminally or chronically ill. Include the amount paid by a viatical settlement provider for the sale or assignment of the insured's death benefit under a life insurance contract.

**Box 3. Check if Per Diem or Reimbursed Amount**

Check a box to indicate whether the payments were made on a per diem (or other periodic) basis or on a reimbursed basis. For accelerated death benefits, do not check a box if you made payments on behalf of a terminally ill person. Per diem basis means payments made on any periodic basis without regard to actual expenses. Reimbursed basis means payments made for actual expenses incurred.

**Box 4. Qualified Contract (Optional)**

Check the box to indicate whether long-term care insurance benefits are paid from a qualified long-term care insurance contract. See **Qualified Long-Term Care Insurance Contract** on page LTC-1.

**Box 5. Check if Chronically ill or Terminally ill (Optional)**

Check the box to indicate whether the insured was chronically or terminally ill. Also, enter the latest date certified. If the insured was neither chronically nor terminally ill, leave this box blank. See **Chronically ill Individual** and **Terminally ill Individual** on page LTC-1.



# Instructions for Form 1099-MISC

Section references are to the Internal Revenue Code unless otherwise noted.

## What's New for 2004

**Final regulations under section 280G for golden parachute payments.** See **Golden parachute payments** on page MISC-6.

**Exemption from reporting certain medical and health care payments.** The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 exempts payments related to certain health arrangements from the reporting requirements of section 6041. For additional information, see the **Caution** under **Box 6. Medical and Health Care Payments** on page MISC-4.

## An Item To Note

In addition to these specific instructions, you should also use the **2004 General Instructions for Forms 1099, 1098, 5498, and W-2G**. Those general instructions include information about:

- Backup withholding
- Magnetic media and electronic reporting requirements
- Penalties
- Who must file (nominee/middleman)
- When and where to file
- Taxpayer identification numbers
- Statements to recipients
- Corrected and void returns
- Other general topics

You can get the general instructions from the IRS website at [www.irs.gov](http://www.irs.gov) or by calling 1-800-TAX-FORM (1-800-829-3676).

## Specific Instructions for Form 1099-MISC

File **Form 1099-MISC**, Miscellaneous Income, for each person to whom you have paid **(a)** at least \$10 in royalties or broker payments in lieu of dividends or tax-exempt interest (see **Box 8** on page MISC-6); **(b)** at least \$600 in rents, services (including parts and materials), prizes and awards, other income payments, medical and health care payments, crop insurance proceeds, cash payments for fish (or other aquatic life) you purchase from anyone engaged in the trade or business of catching fish, or, generally, the cash paid from a notional principal contract to an individual, partnership, or estate; **(c)** any fishing boat proceeds; or **(d)** gross proceeds paid to an attorney (see **Payments to attorneys** on page MISC-2). In addition, use Form 1099-MISC to report that you made direct sales of at least \$5,000 of consumer products to a buyer for resale anywhere other than a permanent retail establishment. You must also file Form 1099-MISC for each person from whom you have withheld any Federal income tax under the backup withholding rules regardless of the amount of the payment.



*Be sure to report payments in the proper box because the IRS uses this information to determine whether the recipient has properly reported the payment.*

**Trade or business reporting only.** Report on Form 1099-MISC only when payments are made in the course of your trade or business. Personal payments are not reportable. You are engaged in a trade or business if you operate for gain or profit. However, nonprofit organizations are considered to be engaged in a trade or business and are subject to these reporting requirements. Nonprofit organizations subject to these

reporting requirements include trusts of qualified pension or profit-sharing plans of employers, certain organizations exempt from tax under section 501(c) or (d), and farmers' cooperatives that are exempt from tax under section 521. Payments by Federal, state, or local government agencies are also reportable.

**Exceptions.** Some payments are not required to be reported on Form 1099-MISC, although they may be taxable to the recipient. Payments for which a **Form 1099-MISC is not required** include:

- Generally, payments to a corporation; but see **Payments reportable to corporations** on page MISC-2;
- Payments for merchandise, telegrams, telephone, freight, storage, and similar items;
- Payments of rent to real estate agents, but see Regulations section 1.6041-1(e)(5), Example 5;
- Wages paid to employees (report on **Form W-2**, Wage and Tax Statement);
- Business travel allowances paid to employees (may be reportable on Form W-2);
- Cost of current life insurance protection (report on Form W-2 or **Form 1099-R**, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.); and
- Payments to a tax-exempt organization, the United States, a state, the District of Columbia, a U.S. possession, or a foreign government.

**Fees paid to informers.** A payment to an informer as an award, fee, or reward for information about criminal activity is not required to be reported if the payment is made by a Federal, state, or local government agency, or by a nonprofit organization exempt from tax under section 501(c)(3) that makes the payment to further the charitable purpose of lessening the burdens of government. For more information, see Regulations section 1.6041-3(l).

**Scholarships.** Do not use Form 1099-MISC to report scholarship or fellowship grants. Scholarship or fellowship grants that are taxable to the recipient because they are paid for teaching, research, or other services as a condition for receiving the grant are considered wages and must be reported on Form W-2. Other taxable scholarship or fellowship payments (to a degree or nondegree candidate) are not required to be reported by you to the IRS on any form. See Notice 87-31, 1987-1 C.B. 475 and Regulations section 1.6041-3(n) for more information.

**Difficulty-of-care payments.** Difficulty-of-care payments that are excludable from the recipient's gross income are not required to be reported. Difficulty-of-care payments to foster care providers are not reportable if paid for not more than 10 children under age 19 and not more than 5 individuals age 19 or older. Amounts paid for more than 10 children or more than 5 individuals are reportable on Form 1099-MISC.

**Canceled debt.** A canceled debt is not reportable on Form 1099-MISC. Canceled debts are required to be reported on **Form 1099-C**, Cancellation of Debt, by financial institutions, credit unions, Federal government agencies, certain agencies connected with the Federal government, and an organization where the lending of money (such as finance and credit card companies) is a significant trade or business. See the **Instructions for Forms 1099-A and 1099-C**.



**Payments reportable to corporations.** The following payments made to corporations generally must be reported on Form 1099-MISC:

- Medical and health care payments reported in box 6.
- Fish purchases for cash reported in box 7.
- Attorneys' fees reported in box 7.
- Gross proceeds paid to an attorney reported in box 14.
- Substitute payments in lieu of dividends or tax-exempt interest reported in box 8.
- Payments by a Federal executive agency for services (vendors) reported in box 7.



*Federal executive agencies may also have to file **Form 8596, Information Return for Federal Agencies**, if a contracted amount for personal services is more than \$25,000. See Rev. Rul. 2003-66, 2003-26 I.R.B. 1115 for details.*

**Payments to attorneys.** The term attorney includes a law firm or other provider of legal services. Attorney's fees of \$600 or more paid in the course of your trade or business are reportable in box 7 of Form 1099-MISC.

**Gross proceeds paid to attorneys.** Under section 6045(f), report in box 14 payments to an attorney made in the course of your trade or business in connection with legal services, such as in a settlement agreement, unless the attorney's fees are reportable by you in box 7. Generally, you are not required to report the claimant's attorney's fees. For example, an insurance company pays a claimant's attorney \$100,000 to settle a claim. The insurance company reports the payment as gross proceeds of \$100,000 in box 14. The insurance company does not have a reporting requirement for the claimant's attorney's fees subsequently paid from these funds.

These rules apply whether or not the legal services are provided to the payer and whether or not the attorney is exclusive payee (e.g., the attorney's and claimant's names are on one check). However, these rules do not apply to wages paid to attorneys that are reportable on Form W-2 or to profits distributed by a partnership to its partners that are reportable on:

- **Schedule K-1 (Form 1065)**, Partner's Share of Income, Credits, Deductions, etc., or
- **Schedule K-1 (Form 1065-B)**, Partner's Share of Income (Loss) From an Electing Large Partnership.

**Payments to corporations for legal services.** The exemption from reporting payments made to corporations does not apply to payments for legal services. Therefore, you must report attorneys' fees (in box 7) or gross proceeds (in box 14) as described above to corporations that provide legal services.

**Taxpayer identification numbers (TINs).** To report payments to attorneys on Form 1099-MISC, you must obtain the attorney's TIN. **Form W-9**, Request for Taxpayer Identification Number and Certification, may be used to obtain the attorney's TIN. An attorney is required to promptly supply its TIN whether it is a corporation or other entity, but the attorney is not required to certify its TIN. If the attorney fails to provide its TIN, the attorney may be subject to a penalty under section 6723 and its regulations, and the reportable payments are subject to backup withholding.

**Fish purchases.** If you are in the trade or business of purchasing fish for resale, you must report total **cash** payments of \$600 or more paid during the year to any person who is engaged in the trade or business of catching fish. Report these payments in box 7. You are required to keep records showing the date and amount of each cash payment made during the year, but you must report only the total amount paid for the year on Form 1099-MISC.

"Fish" means all fish and other forms of aquatic life. "Cash" means U.S. and foreign coin and currency and a cashier's check, bank draft, traveler's check, or money order. Cash does not include a check drawn on your personal or business account.

**Deceased employee's wages paid to estate or beneficiary.** If an employee died during the year, you must report on Form 1099-MISC the accrued wages, vacation pay, and other

compensation paid after the date of death. If you made the **payment in the same year the employee died**, you must withhold social security and Medicare taxes on the payment and report them only as social security and Medicare wages on the employee's Form W-2 to ensure that proper social security and Medicare credit is received. On the Form W-2, show the payment as social security wages (box 3) and Medicare wages and tips (box 5) and the social security and Medicare taxes withheld in boxes 4 and 6; **do not show the payment in box 1 of Form W-2**. If you made the **payment after the year of death**, do not report it on Form W-2, and do not withhold social security and Medicare taxes.

Whether the payment is made in the year of death or after the year of death, you also must report it on Form 1099-MISC for the payment to the estate or beneficiary. Report the payment in box 3 (rather than in box 7 as specified in Rev. Rul. 86-109, 1986-2 C.B. 196). See the **Example** below. Enter the name and TIN of the payment recipient on Form 1099-MISC. For example, if the recipient is an individual beneficiary, enter the name and social security number of the individual; if the recipient is the estate, enter the name and employer identification number of the estate. The general backup withholding rules apply to this payment.

However, death benefits from qualified and nonqualified deferred compensation plans paid to the estate or beneficiary of a deceased employee are not reportable on Form 1099-MISC but are reportable on Form 1099-R. See the **Instructions for Forms 1099-R and 5498**.

**Example.** Before Employee A's death on June 15, 2004, A was employed by Employer X and received \$10,000 in wages on which Federal income tax of \$1,500 was withheld. When A died, X owed A \$2,000 in wages and \$1,000 in accrued vacation pay. The total of \$3,000 (less the social security and Medicare taxes withheld) was paid to A's estate on July 20, 2004. Because X made the payment **during the year of death**, X must withhold social security and Medicare taxes on the \$3,000 payment and must complete **Form W-2** as follows:

- **Box 1**—10000.00 (does not include the \$3,000 accrued wages and vacation pay)
- **Box 2**—1500.00
- **Box 3**—13000.00 (includes the \$3,000 accrued wages and vacation pay)
- **Box 4**—806.00 (6.2% of the amount in box 3)
- **Box 5**—13000.00 (includes the \$3,000 accrued wages and vacation pay)
- **Box 6**—188.50 (1.45% of the amount in box 5)

Employer X also must complete **Form 1099-MISC** as follows:

- **Boxes for recipient's name, address, and TIN**—the estate's name, address, and TIN.
- **Box 3**—3000.00 (Even though amounts were withheld for social security and Medicare taxes, the gross amount is reported here.)

If Employer X made the payment **after the year of death**, the \$3,000 would **not** be subject to social security and Medicare taxes and would **not** be shown on Form W-2. However, the employer would still file Form 1099-MISC.

**Employee business expense reimbursements.** Do not use Form 1099-MISC to report employee business expense reimbursements. Report payments made to employees under a nonaccountable plan as wages on Form W-2. Generally, payments made to employees under an accountable plan are not reportable on Form W-2, except in certain cases when you pay per diem or mileage allowance. For more information, see the **Instructions for Forms W-2 and W-3, Pub. 463**, Travel, Entertainment, Gift, and Car Expenses, and **Pub. 1542**, Per Diem Rates. For information on reporting employee moving expense reimbursements on Form W-2, see the Instructions for Forms W-2 and W-3.

**Independent contractor or employee.** Generally, you must report payments to independent contractors on Form 1099-MISC in box 7. See the instructions for box 7 on page MISC-4.



*Section 530 of the Revenue Act of 1978 as extended by section 269(c) of P.L. 97-248, deals with the employment tax status of independent contractors and employees. To qualify for relief under section 530, employers must file Form 1099-MISC. Additional requirements for relief are discussed in Rev. Proc. 85-18, 1985-1 C.B. 518. Also, see Notice 87-19, 1987-1 C.B. 455, for special rules that may apply to certain skilled workers, such as engineers, designers, drafters, computer programmers, and systems analysts.*

**Transit passes and parking for independent contractors.**

Although you cannot provide qualified transportation fringes to independent contractors, the working condition and de minimus fringe rules for transit passes and parking apply to independent contractors. Tokens or farecards that enable an independent contractor to commute on a public transit system (not including privately operated van pools) are excludable from the independent contractor's gross income and are not reportable on Form 1099-MISC if their value in any month is \$21 or less. However, if the value of a pass provided in a month is greater than \$21, the full value is includible in gross income and is reportable on Form 1099-MISC. The value of parking may be excludable from an independent contractor's gross income, and, therefore, not reportable on Form 1099-MISC if certain requirements are met. See Regulations section 1.132-9, Q/A 24.

**Directors' fees.** You must report directors' fees and other remuneration, including payments made after retirement, on Form 1099-MISC in the year paid. Report them in box 7.

**Commissions paid to lottery ticket sales agents.** A state that has control over and responsibility for online and instant lottery games must file Form 1099-MISC to report commissions paid, whether directly or indirectly, to licensed sales agents. For example, State X retains control over and liability for online and instant lottery games. For online ticket sales, State X pays commissions by allowing an agent to retain 5% of the ticket proceeds the agent remits to State X. For instant ticket sales, State X pays commissions by providing tickets to the agent for 5% less than the proceeds to be obtained by the agent from the sale of those tickets. If the commissions for the year total \$600 or more, they must be reported in box 7 on Form 1099-MISC. See Rev. Rul. 92-96, 1992-2 C.B. 281.

**Escrow agent; construction project.** When an escrow agent maintains owner-provided funds in an escrow account for a construction project, performs management and oversight functions relating to the construction project, and makes payments for the owner and the general contractor, the escrow agent must file Form 1099-MISC for reportable payments of \$600 or more. This requirement applies whether or not the escrow agent is a bank. If the contractor is the borrower of the funds, do not report on Form 1099-MISC any loan payments made to the contractor/borrower.

**Indian gaming profits, payments to tribal members.** If you make payments to members of Indian tribes from the net revenues of class II or class III gaming activities conducted or licensed by the tribes, you must withhold Federal income tax on such payments and file Form 1099-MISC.

File Form 1099-MISC to report the distributions to tribal members. Report the payments in box 3 and the Federal income tax withheld in box 4. **Pub. 15-A**, Employer's Supplemental Tax Guide, contains the necessary "Tables for Withholding on Distributions of Indian Gaming Profits to Tribal Members."

**State or local sales taxes.** If state or local sales taxes are imposed on the service provider and you (as the buyer) pay them to the service provider, report them on Form 1099-MISC as part of the reportable payment. However, if sales taxes are imposed on you (as the buyer) and collected from you by the service provider, do not report the sales taxes on Form 1099-MISC.

**Statements to recipients.** If you are required to file Form 1099-MISC, you must provide a statement to the recipient. For more information about the requirement to furnish a statement

to each recipient, see part **H** in the 2004 General Instructions for Forms 1099, 1098, 5498, and W-2G .

**2nd TIN not.** You may enter an "X" in this box if you were notified by the IRS twice within 3 calendar years that the payee provided an incorrect TIN. If you mark this box, the IRS will not send you any further notices about this account.



*For information on the TIN Matching System offered by the IRS, see the 2004 General Instructions for Forms 1099, 1098, 5498, and W-2G.*

**Box 1. Rents**

Enter amounts of \$600 or more for all types of **rents**, such as real estate rentals paid for office space (unless paid to a real estate agent), machine rentals (e.g., renting a bulldozer to level your parking lot), and pasture rentals (e.g., farmers paying for the use of grazing land). If the machine rental is part of a contract that includes both the use of the machine and the operator, the rental should be prorated between the rent of the machine (reported in box 1) and the operator's charge (reported as nonemployee compensation in box 7). Public housing agencies must report in box 1 rental assistance payments made to owners of housing projects. See Rev. Rul. 88-53, 1988-1 C.B. 384.

**Coin-operated amusements.** If an arrangement between an owner of coin-operated amusements and an owner of a business establishment where the amusements are placed is a lease of the amusements or the amusement space, the owner of the amusements or the owner of the space, whoever makes the payments, must report the lease payments in box 1 of Form 1099-MISC if the payments total at least \$600. However, if the arrangement is a joint venture, the joint venture must file a **Form 1065**, U.S. Return of Partnership Income, and provide each partner with information necessary to report the partner's share of the taxable income. Coin-operated amusements include video games, pinball machines, jukeboxes, pool tables, slot machines, and other machines and gaming devices operated by coins or tokens inserted into the machines by individual users. For more information, see Rev. Rul. 92-49, 1992-1 C.B. 433.

**Box 2. Royalties**

Enter gross **royalty payments** of \$10 or more before reduction for severance and other taxes that may have been withheld and paid. Include in this box gross royalties (before reduction for fees, commissions, or expenses) paid by a publisher directly to an author or literary agent or paid by a literary agent to an author. Do not include surface royalties. They should be reported in box 1. Do not report oil or gas payments for a working interest in box 2; report payments for working interests in box 7. Do not report timber royalties made under a pay-as-cut contract; report such timber royalties on **Form 1099-S**, Proceeds From Real Estate Transactions.

**Box 3. Other Income**

Enter **other income** of \$600 or more required to be reported on Form 1099-MISC that is not reportable in one of the other boxes on the form.

Also enter in box 3 **prizes and awards** that are not for services performed. Include the fair market value (FMV) of merchandise won on game shows. Also include amounts paid to a winner of a sweepstakes not involving a wager. If a wager is made, report the winnings on **Form W-2G**, Certain Gambling Winnings.



*If, not later than 60 days after the winner becomes entitled to the prize, the winner can choose the option of a lump sum or an annuity payable over at least 10 years, the payment of winnings is considered made when actually paid. If the winner chooses an annuity, file Form 1099-MISC each year to report the annuity paid during that year.*

Do not include prizes and awards paid to your employees. Report these on Form W-2. Do not include in box 3 prizes and awards for services performed by nonemployees, such as an

**Illustrated example.** The completed Form 1099-MISC illustrates the following example. Z Builders is a contractor that subcontracts drywall work to Mr. X, a sole proprietor who does business as Y Drywall. During the year, Z Builders pays Mr. X \$5,500. Z Builders must file Form 1099-MISC because they paid Mr. X \$600 or more in the course of their trade or business, and Mr. X is not a corporation.

9595  VOID  CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.  Z Builders 123 Maple Avenue Oaktown, VA 22000 703-123-4567		1 Rents \$	OMB No. 1545-0115  <b>2005</b> Form 1099-MISC	<b>Miscellaneous Income</b>	
		2 Royalties \$	3 Other income \$		
PAYER'S Federal identification number 10-9999999	RECIPIENT'S identification number 123-00-6789	5 Fishing boat proceeds \$	6 Medical and health care payments \$	<b>Copy A</b> <b>For Internal Revenue Service Center</b>  <b>File with Form 1096.</b>	
RECIPIENT'S name Mr. X dba/Rock Hill Drywall		7 Nonemployee compensation \$ 5500.00	8 Substitute payments in lieu of dividends or interest \$		
Street address (including apt. no.) 456 Flower Lane		9 Payer made direct sales of \$5,000 or more of consumer products to a buyer (recipient) for resale <input type="checkbox"/>	10 Crop insurance proceeds \$		
City, state, and ZIP code Oaktown, VA 22000		11	12		
Account number (see instructions)	2nd TIN not. <input type="checkbox"/>	13 Excess golden parachute payments \$	14 Gross proceeds paid to an attorney \$		
15		16 State tax withheld \$	17 State/Payer's state no.	18 State income \$	

Form 1099-MISC

Cat. No. 14425J

Department of the Treasury - Internal Revenue Service

award for the top commission salesperson. Report them in box 7.

Prizes and awards received in recognition of past accomplishments in religious, charitable, scientific, artistic, educational, literary, or civic fields are **not** reportable if (a) the winners are chosen without action on their part, (b) the winners are not expected to perform future services, and (c) the payer transfers the prize or award to a charitable organization or governmental unit under a designation made by the recipient. See Rev. Proc. 87-54, 1987-2 C.B. 669.

**Other items** required to be reported in box 3 include the following:

1. Generally, all **punitive damages**, any damages for nonphysical injuries or sickness, and any other taxable damages. Report punitive damages even if they relate to physical injury or physical sickness. Generally, report all **compensatory damages** for nonphysical injuries or sickness, such as employment discrimination or defamation. However, **do not** report damages (other than punitive damages):

- a. Received on account of personal physical injuries or physical sickness;
- b. That do not exceed the amount paid for medical care for emotional distress; or
- c. Received on account of nonphysical injuries (e.g., emotional distress) under a written binding agreement, court decree, or mediation award in effect on or issued by September 13, 1995.

Damages received on account of emotional distress, including physical symptoms such as insomnia, headaches, and stomach disorders, are **not** considered received for a physical injury or physical sickness and are reportable unless

described in **b** or **c** above. However, damages received on account of emotional distress due to physical injuries or physical sickness are not reportable.

Also report **liquidated damages** received under the Age Discrimination in Employment Act of 1967.



**TIP** Taxable back pay damages may be wages and reportable on Form W-2. See **Pub. 957, Reporting Back Pay and Special Wage Payments to the Social Security Administration.**

2. Payments to nonemployees specified in, and payments similar to those specified in, Rev. Rul. 65-18, 1965-1 C.B. 32, about payments to patients and members in Department of Veterans Affairs (VA) hospitals and domiciliaries under the **VA therapeutic or rehabilitative programs.**

3. Payments as explained on page MISC-2 under **Deceased employee's wages paid to estate or beneficiary.**

4. Payments as explained on page MISC-3 under **Indian gaming profits, payments to tribal members.**

5. **Termination payments** to former self-employed insurance salespeople. These payments are not subject to self-employment tax and are reportable in box 3 (rather than box 7) if **all** the following apply:

- a. The payments are received from an insurance company because of services performed as an insurance salesperson for the company.
- b. The payments are received after termination of the salesperson's agreement to perform services for the company.
- c. The salesperson did not perform any services for the company after termination and before the end of the year.
- d. The salesperson enters into a covenant not to compete against the company for at least 1 year after the date of termination.



e. The amount of the payments depends primarily on policies sold by the salesperson or credited to the salesperson's account during the last year of the service agreement or to the extent those policies remain in force for some period after termination, or both.

f. The amount of the payments does not depend at all on length of service or overall earnings from the company (regardless of whether eligibility for payment depends on length of service).

If the termination payments do not meet these requirements, report them in box 7.

#### Box 4. Federal Income Tax Withheld

Enter backup withholding. For example, persons who have not furnished their TIN to you are subject to withholding at a 28% rate on payments required to be reported in boxes 1, 2 (net of severance taxes), 3, 5 (to the extent paid in cash), 6, 7 (except fish purchases for cash), 8, 10, and 14. For more information on backup withholding, see the 2004 General Instructions for Forms 1099, 1098, 5498, and W-2G.

Also enter any income tax withheld from payments to members of Indian tribes from the net revenues of class II or class III gaming activities conducted or licensed by the tribes.

#### Box 5. Fishing Boat Proceeds

Enter the share of all proceeds from the sale of a catch or the FMV of a distribution in kind to each crew member of **fishing boats** with normally fewer than 10 crew members. A fishing boat has normally fewer than 10 crew members if the average size of the operating crew was fewer than 10 on trips during the preceding 4 calendar quarters.

In addition, report cash payments of up to \$100 per trip that are contingent on a minimum catch and are paid solely for additional duties (such as mate, engineer, or cook) for which additional cash payments are traditional in the industry. However, do not report on Form 1099-MISC any wages reportable on Form W-2.

#### Box 6. Medical and Health Care Payments

Enter payments of \$600 or more made in the course of your trade or business to each physician or other supplier or provider of **medical or health care services**. Include payments made by medical and health care insurers under health, accident, and sickness insurance programs. If payment is made to a corporation, list the corporation as the recipient rather than the individual providing the services. Payments to persons providing health care services often include charges for injections, drugs, dentures, and similar items. In these cases the entire payment is subject to information reporting. You are not required to report payments to pharmacies for prescription drugs.

The exemption from issuing Form 1099-MISC to a corporation does not apply to payments for medical or health care services provided by corporations, including professional corporations. However, you are not required to report payments made to a tax-exempt hospital or extended care facility or to a hospital or extended care facility owned and operated by the United States (or its possessions), a state, the District of Columbia, or any of their political subdivisions, agencies, or instrumentalities.



*Payments made under a flexible spending arrangement (as defined in section 106(c)(2)) or a health reimbursement arrangement which is treated as employer-provided coverage under an accident or health plan for purposes of section 106 are exempt from the reporting requirements of section 6041.*

#### Box 7. Nonemployee Compensation

Enter **nonemployee compensation** of \$600 or more. Include fees, commissions, prizes and awards for services performed as a nonemployee, other forms of compensation for services performed for your trade or business by an individual who is not your employee, and fish purchases for cash. Include oil and gas payments for a working interest, whether or not services are

performed. Also include expenses incurred for the use of an entertainment facility that you treat as compensation to a nonemployee. Federal executive agencies that make payments to vendors for services, including payments to corporations, must report the payments in this box. See Rev. Rul. 2003-66, 2003-26 I.R.B. 1115.

**Exceptions.** Do not report in box 7, nor elsewhere on Form 1099-MISC, the cost of current life insurance protection, (report on Form W-2 or Form 1099-R); an employee's wages, travel or auto allowance, or bonuses (report on Form W-2); or the cost of group-term life insurance paid on behalf of a former employee (report on Form W-2).

**Self-employment tax.** Generally, amounts reportable in box 7 are subject to self-employment tax. However, corporations are not subject to self-employment tax. If payments to individuals are not subject to this tax and are not reportable elsewhere on Form 1099-MISC, report the payments in box 3. However, report section 530 (of the Revenue Act of 1978) worker payments in box 7.

**When to report.** If the following four conditions are met, you must generally report a payment as nonemployee compensation: **(1)** you made the payment to someone who is not your employee; **(2)** you made the payment for services in the course of your trade or business (including government agencies and nonprofit organizations); **(3)** you made the payment to an individual, partnership, estate, or, in some cases, a corporation; and **(4)** you made payments to the payee of at least \$600 during the year.

**Examples.** The following are some examples of payments to be reported in box 7:

- Professional service fees, such as fees to attorneys (including corporations), accountants, architects, contractors, subcontractors, etc.
- Fees paid by one professional to another, such as fee-splitting or referral fees.
- Payments by attorneys to witnesses or experts in legal adjudication.
- Payment for services, including payment for parts or materials used to perform the services if supplying the parts or materials was incidental to providing the service. For example, report the total insurance company payments to an auto repair shop under a repair contract showing an amount for labor and another amount for parts, if furnishing parts was incidental to repairing the auto.
- Commissions paid to nonemployee salespersons that are subject to repayment but not repaid during the calendar year.
- A fee paid to a nonemployee, including an independent contractor, or travel reimbursement for which the nonemployee did not account to the payer, if the fee and reimbursement total at least \$600. To help you determine whether someone is an independent contractor or an employee, see Pub. 15-A.
- Payments to nonemployee entertainers for services. Use **Form 1042-S**, Foreign Person's U.S. Source Income Subject to Withholding, for payments to nonresident aliens.
- **Exchanges of services** between individuals in the course of their trades or businesses. For example, an attorney represents a painter for nonpayment of business debts in exchange for the painting of the attorney's law offices. The amount reportable by each on Form 1099-MISC is the FMV of his or her own services performed. However, if the attorney represents the painter in a divorce proceeding, this is an activity that is unrelated to the painter's trade or business. The attorney must report on Form 1099-MISC the value of his or her services. But the painter need not report on Form 1099-MISC the value of painting the law offices because the work is in exchange for legal services that are separate from the painter's business.
- Taxable fringe benefits for nonemployees. For information on the valuation of fringe benefits, see **Pub. 15-B**, Employer's Tax Guide to Fringe Benefits.
- Gross oil and gas payments for a working interest.
- Payments to an insurance salesperson who is not your common law or statutory employee. See Pub. 15-A for the definition of employee. However, for termination payments to



former insurance salespeople, see **5. Termination payments** on page MISC-4.

- Directors' fees as explained under **Directors' fees** on page MISC-3.
- Commissions paid to licensed lottery ticket sales agents as explained under **Commissions paid to lottery ticket sales agents** on page MISC-3.
- Payments to section 530 (of the Revenue Act of 1978) workers. See the **TIP** on page MISC-3.
- Fish purchases for cash. See **Fish purchases** on page MISC-2.

**Golden parachute payments.** A parachute payment is any payment that meets **all** of the following conditions.

1. The payment is in the nature of compensation.
2. The payment is to, or for the benefit of, a disqualified individual.
3. The payment is contingent on a change in the ownership of a corporation, the effective control of a corporation, or the ownership of a substantial portion of the assets of a corporation (a change in ownership or control).
4. The payment has (together with other payments described in **1**, **2**, and **3** above made to the same individual) an aggregate present value of at least 3 times the individual's base amount.

A **disqualified individual** is one who at any time during the 12-month period prior to and ending on the date of the change in ownership or control of the corporation (the disqualified individual determination period) was an employee or independent contractor and was in regard to that corporation, a shareholder, an officer, or a highly compensated individual.

For more details, see Regulations section 1.280G-1 effective for parachute payments made relative to a change in ownership or control that occurred after December 31, 2003. Also, see Rev. Proc. 2003-68, 2003-34 I.R.B. 398, concerning the valuation of stock options for purposes of golden parachute payment rules.

**Independent contractor.** Enter in box 7 the total compensation, including any golden parachute payment. For excess golden parachute payments, see box 13 reporting instructions.

For **employee** reporting of these payments, see Pub. 15-A.

### **Box 8. Substitute Payments in Lieu of Dividends or Interest**

Enter aggregate payments of at least \$10 received by a broker for a customer in lieu of **dividends or tax-exempt interest** as a result of a loan of a customer's securities. For this purpose, a customer includes an individual, trust, estate, partnership, association, company, or corporation (see Notice 2003-67, 2003-40 I.R.B. 752). It does not include a tax-exempt organization, the United States, any state, the District of Columbia, a U.S. possession, or a foreign government. File Form 1099-MISC with the IRS and furnish a copy to the customer for whom you received the payment. Also, file Form 1099-MISC for and furnish a copy to an individual for whom you received a payment in lieu of tax-exempt interest.

**Substitute payment** means a payment in lieu of **(a)** a dividend or **(b)** tax-exempt interest to the extent that interest (including OID) has accrued while the securities were on loan.

### **Box 9. Payer Made Direct Sales of \$5,000 or More**

Enter an "X" in the checkbox for sales by you of \$5,000 or more of **consumer products** to a person on a buy-sell, deposit-commission, or other commission basis for resale (by the buyer or any other person) anywhere other than in a permanent retail establishment. Do not enter a dollar amount in this box.

If you are reporting an amount in box 7, you may also check box 9 on the same Form 1099-MISC.

The report you must give to the recipient for these direct sales need not be made on the official form. It may be in the form of a letter showing this information along with commissions, prizes, awards, etc.

### **Box 10. Crop Insurance Proceeds**

Enter **crop insurance proceeds** of \$600 or more paid to farmers by insurance companies unless the farmer has informed the insurance company that expenses have been capitalized under section 278, 263A, or 447.

### **Boxes 11 and 12. Reserved**

Make no entries in these boxes.

### **Box 13. Excess Golden Parachute Payments**

Enter any excess golden parachute payments. An excess parachute payment is the amount of the excess of any parachute payment over the base amount (the average annual compensation for services includible in the individual's gross income over the most recent 5 taxable years). See Q/A-38 through Q/A-44 of Regulations section 1.280G-1 for how to compute the excess amount.

See **Golden parachute payments** above for more information.

### **Box 14. Gross Proceeds Paid to an Attorney**

Report **gross proceeds paid to an attorney** in connection with legal services (regardless of whether the services are performed for the payer). See **Payments to attorneys** on page MISC-2.

### **Box 15. Blank Box**

You may use box 15 to provide any other information to the recipient.

### **Boxes 16–18. State Information**

These boxes, and Copies 1 and 2, are provided for your convenience only and need not be completed for the IRS. Use the **state information** boxes to report payments for up to two states. Keep the information for each state separated by the dash line. If you withheld state income tax on this payment, you may enter it in box 16. In box 17, enter the abbreviated name of the state and the payer's state identification number. The state number is the payer's identification number assigned by the individual state. In box 18, you may enter the amount of the state payment. Use Copy 1 to provide information to the state tax department. Give Copy 2 to the recipient for use in filing the recipient's state income tax return.



# Instructions for Form 1099-PATR

Section references are to the Internal Revenue Code unless otherwise noted.

## A Change To Note

The Jobs and Growth Tax Relief Reconciliation Act of 2003 (Public Law 108-27) reduced the backup withholding rate to 28% on amounts paid after December 31, 2002.

## An Item To Note

In addition to these specific instructions, you should also use the **2004 General Instructions for Forms 1099, 1098, 5498, and W-2G**. Those general instructions include information about:

- Backup withholding
- Magnetic media and electronic reporting requirements
- Penalties
- Who must file (nominee/middleman)
- When and where to file
- Taxpayer identification numbers
- Statements to recipients
- Corrected and void returns
- Other general topics

You can get the general instructions from the IRS website at [www.irs.gov](http://www.irs.gov) or by calling 1-800-TAX-FORM (1-800-829-3676).

## Specific Instructions for Form 1099-PATR

File **Form 1099-PATR**, Taxable Distributions Received From Cooperatives, for each person to whom the cooperative has paid at least \$10 in patronage dividends and other distributions described in section 6044(b) or from whom you withheld any Federal income tax under the backup withholding rules regardless of the amount of the payment. A cooperative determined to be primarily engaged in the retail sale of goods or services that are generally for personal, living, or family use of the members may ask for and receive exemption from filing Form 1099-PATR. See **Form 3491**, Consumer Cooperative Exemption Application, for information about how to apply for this exemption. Report dividends paid on a cooperative's capital stock on **Form 1099-DIV**, Dividends and Distributions.

**Exceptions.** Generally, you are not required to file Form 1099-PATR for payments made to a corporation, a tax-exempt organization, the United States, a state, a possession, or the District of Columbia. See Regulations section 1.6044-3(c).

### Statements to Recipients

If you are required to file Form 1099-PATR, you must provide a statement to the recipient. For more information about the requirement to furnish an official form or acceptable substitute statement to recipients in person, by statement mailing, or electronically, see part **H** in the **2004 General Instructions for Forms 1099, 1098, 5498, and W-2G**.

### 2nd TIN Not.

You may enter an "X" in this box if you were notified by the IRS twice within 3 calendar years that the payee provided an incorrect taxpayer identification number (TIN). If you mark this box, the IRS will not send you any further notices about this account.



For more information on the TIN Matching System offered by the IRS, see the **2004 General Instructions for Forms 1099, 1098, 5498, and W-2G**.

## Box 1. Patronage Dividends

Enter the total patronage dividends paid in cash (qualified or "consent" checks), qualified written notices of allocation (face amount), and other property (except nonqualified written notices of allocation).

## Box 2. Nonpatronage Distributions

This box applies only to farmers' cooperatives exempt from tax under section 521. Enter the total nonpatronage distributions paid in cash (qualified or "consent" checks), qualified written notices of allocation (face amount), and other property. Do not include nonqualified written notices of allocation.

## Box 3. Per-Unit Retain Allocations

Enter the total per-unit retain allocations paid in cash, qualified per-unit retain certificates (face amount), and other property.

## Box 4. Federal Income Tax Withheld

Enter backup withholding. For example, persons who have not furnished their TIN to you in the manner required are subject to withholding at a 28% rate on payments required to be reported in boxes 1, 2, 3, and 5 to the extent such payments are in cash or qualified check. See Regulations section 31.3406(b)(2)-5 for more information on backup withholding by cooperatives.

## Box 5. Redemption of Nonqualified Notices and Retain Allocations

For farmers' cooperatives qualifying under section 521 only, enter all redemptions of nonqualified written notices of allocation issued as patronage dividends or nonqualified written notices of allocation issued as nonpatronage allocations. Also enter nonqualified per-unit retain certificates issued with respect to marketing.

## Pass-Through Credits

Report in the appropriate boxes the patron's share of unused credits that the cooperative is passing through to the patron.

## Box 6. (Certain Credits)

For the patron, state separately in box 6 (or in the blank box below boxes 8 and 9 if more than one credit applies) the type and amount of each of the following credits:

- The empowerment zone and renewal community employment credit (Form 8844).
- The Indian employment credit (Form 8845).
- The welfare-to-work credit (Form 8861).
- The New York Liberty Zone business employee credit (Form 8884) for wages paid during 2002 or 2003.

## Box 7. Investment Credit

Enter the total investment credit for the patron.

## Box 8. Work Opportunity Credit

Enter the total work opportunity credit for the patron. **Do not** include the New York Liberty Zone business employee credit on line 8; instead, include it on line 6.

## Box 9. Patron's AMT Adjustment

Enter the total alternative minimum tax (AMT) patronage dividend adjustment for the patron.



# Instructions for Form 1099-Q

Section references are to the Internal Revenue Code unless otherwise noted.

## An Item To Note

In addition to these specific instructions, you should also use the **2004 General Instructions for Forms 1099, 1098, 5498, and W-2G**. Those general instructions include information about:

- Backup withholding
- Magnetic media and electronic reporting requirements
- Penalties
- Who must file (nominee/middleman)
- When and where to file
- Taxpayer identification numbers
- Statements to recipients
- Corrected and void returns
- Other general topics

You can get the general instructions from the IRS website at [www.irs.gov](http://www.irs.gov) or by calling 1-800-TAX-FORM (1-800-829-3676).

## Specific Instructions for Form 1099-Q

File **Form 1099-Q**, Payments From Qualified Education Programs (Under Sections 529 and 530), if you made a distribution from a qualified tuition program defined under section 529 or a Coverdell education savings account (ESA) defined under section 530.

**Note: Do not** file Form 1099-Q for a change in the name of the designated beneficiary on a qualified tuition program account if the new beneficiary is a member of the former beneficiary's family. Also, for a Coverdell ESA, the new beneficiary must be a member of the designated beneficiary's family and be under age 30 (except beneficiaries with special needs).

## Qualified Education Programs

### Qualified Tuition Program

A qualified tuition program is a program described in section 529 that is established and maintained by a private eligible educational institution or a state (or its agency or instrumentality).

Under a qualified tuition program a person:

1. May purchase tuition credits or certificates on behalf of a designated beneficiary that entitle the beneficiary to the waiver or payment of qualified higher education expenses or
2. In the case of a program established and maintained by a state, may make contributions to an account established to meet the higher education expenses of the designated beneficiary.

Other rules apply. See Proposed Regulations section 1.529-2 and Notice 2001-81, 2001-2 C.B. 617.

## Coverdell Education Savings Account (ESA)

Coverdell ESAs are described under section 530. Report any contributions or rollovers for these accounts on **Form 5498-ESA**, Coverdell ESA Contribution Information. See the **Instructions for Form 5498-ESA** for more information.

### Family Member

A family member of the designated beneficiary includes their spouse, children and their descendants, stepchildren and their descendants, siblings and their children, parents and grandparents, stepparents, and their spouses. It also includes the first cousins of the designated beneficiary.

### Statements to Recipients

If you are required to file Form 1099-Q, you must provide a statement to the recipient. Furnish a copy of Form 1099-Q or an acceptable substitute statement to each recipient. Also, see part H in the **2004 General Instructions for Forms 1099, 1098, 5498, and W-2G**.

### Program's Name and Employer Identification Number (EIN)

In the payer's/trustee's name and Federal identification number areas of the form, enter the name and EIN of the qualified tuition program or that of the trustee for a Coverdell ESA.

If the qualified tuition program is a program established and maintained by a state using the EIN of the state, enter the name of the state on the first name line and the name of the program on the second name line.

### Recipient's Name and Social Security Number (SSN)

For a **qualified tuition program**, list the designated beneficiary as recipient only if the distribution is made **(a)** directly to the designated beneficiary or **(b)** to an eligible educational institution for the benefit of the designated beneficiary. Otherwise, list the account owner as the recipient of the distribution. Enter the SSN for the applicable recipient.

For a **Coverdell ESA**, enter the name and SSN of the designated beneficiary as the recipient.

### Box 1. Gross Distribution

Gross distributions from a **qualified tuition program**, whether in cash or in kind, include tuition credits or certificates, payment vouchers, tuition waivers, or other similar items. Gross distributions also include a refund to the account owner or the designated beneficiary, or to the beneficiary upon death or disability. For more information on reporting distributions, see Proposed Regulations section 1.529-4.

Gross distributions from a **Coverdell ESA** include a refund, a payment upon death or disability, or a withdrawal of excess contributions plus earnings.





If earnings and basis are not reported for Coverdell ESA distributions, leave boxes 2 and 3 blank. Do not enter zero. Instead, you must report the fair market value (FMV) as of the end of the year in the blank box below boxes 5 and 6. Label the amount "FMV." See Notice 2003-53, 2003-33 I.R.B. 362, for more reporting requirements.

## Box 2. Earnings

Use the earnings ratio described in Proposed Regulations section 1.529-3 and Notice 2001-81 to determine the earnings (or loss) on the gross distribution reported in box 1. Enter the earnings in box 2. If there is a loss and this is not the final year for distributions from the account or there are no earnings, enter zero in box 2. Enter a loss in box 2 only if this is the final year for distributions from the account. Any earnings are not subject to backup withholding.

If you are reporting a distribution from a Coverdell ESA that includes a returned contribution plus earnings, you should file two Forms 1099-Q—one to report the returned contribution plus earnings, the other to report the distribution of the other part of the account.

You should file a separate Form 1099-Q for **any** trustee-to-trustee transfer.

For Coverdell ESAs, if you are not reporting earnings, see the **Caution** above.



For Coverdell ESAs, if you are reporting earnings on a distribution of excess contributions, use the method for calculating the net income attributable to IRA contributions that are distributed as a returned contribution under Notice 2000-39, 2000-30 I.R.B. 132, and Proposed Regulations section 1.408-11.

Use the blank box below boxes 5 and 6 to indicate that the amount in box 2 includes earnings on excess contributions. To meet this requirement, enter distribution code 2 or 3 (as applicable) in the blank box. See Notice 2003-53 for more information.

## Box 3. Basis

Enter the basis in the gross distribution reported in box 1. The amount in box 3 must equal box 1 minus box 2.

For Coverdell ESAs, if you are not reporting basis, see the **Caution** above.



For determining basis of a Coverdell ESA, you may rely on Notice 2001-81.

## Box 4. Trustee-to-Trustee Transfer Checkbox

Check this box if the distribution was made directly (trustee-to-trustee transfer) from one qualified tuition program to another. For a Coverdell ESA, check this box if the distribution was made directly to another Coverdell ESA or a qualified tuition program.

In a **trustee-to-trustee transfer** between qualified education programs, the distributing program must provide you a statement reporting the earnings portion of the distribution within 30 days of the distribution or by January 10th, whichever is earlier. You must properly account for this in computing the earnings or (loss) reported in box 2 and the basis reported in box 3.



If you do not have records of whether a gross distribution from a Coverdell ESA made in 2004 was a trustee-to-trustee transfer, leave Box 4 blank.

## Box 5. Checkbox

Check the "Private" box to indicate the distribution is from a qualified tuition program established by one or more private eligible educational institutions or check the "State" box to indicate the distribution is from a qualified tuition program established by a state. Otherwise, check the "Coverdell ESA" box.

## Box 6. Designated Beneficiary Checkbox

Check the box if the recipient is not the designated beneficiary under a qualified tuition program or a Coverdell ESA (see section 529(e)(1)).

**Distribution codes.** For 2004, you may, but are not required, to include one of the following distribution codes in the blank box below boxes 5 and 6. You may abbreviate as needed. For example, for distribution code 1, you may enter "distr. code 1."

1—Distributions

2—Excess contributions plus earnings taxable in 2004

3—Excess contributions plus earnings taxable in 2003

4—Disability

5—Death

6—Prohibited transaction

Use this code for distributions (including transfers) to the account holder and any direct payments to a qualified educational facility. However, use codes 2 or 3 for withdrawals of excess contributions. Use this code for withdrawals of excess Coverdell ESA contributions and earnings unless Code 3 applies.

Use this code for withdrawals of excess contributions from a Coverdell ESA. Advise payees, at the time the distribution is made, that the earnings are taxable in the year in which the contributions were made.

Use this code if you made distributions after the account holder was disabled (see section 72(m)(7)).

Use this code for payments to a decedent's beneficiary, including an estate.

See section 530(e).



# Instructions for Forms 1099-R and 5498

Section references are to the Internal Revenue Code unless otherwise noted.

## What's New for 2004

### Form 1099-R

**Distribution codes.** The explanations to distribution Codes 1, 2, J, Q, and T have been modified. See **Guide to Distribution Codes** on pages R-9 and R-10.

### An Item To Note

In addition, see the **2004 General Instructions for Forms 1099, 1098, 5498, and W-2G** for information on:

- Backup withholding
- Magnetic media and electronic reporting requirements
- Penalties
- Who must file (nominee/middleman)
- When and where to file
- Taxpayer identification numbers
- Statements to recipients
- Corrected and void returns
- Other general topics

You can get the general instructions from the IRS website at [www.irs.gov](http://www.irs.gov) or call 1-800-TAX-FORM (1-800-829-3676).

### Specific Instructions for Form 1099-R

File **Form 1099-R**, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., for each person to whom you have made a designated distribution of \$10 or more from profit-sharing or retirement plans, any IRAs, annuities, pensions, insurance contracts, survivor income benefit plans, permanent and total disability payments under life insurance contracts, charitable gift annuities, etc.

Also, report on Form 1099-R death benefit payments made by employers that are **not** made as part of a pension, profit-sharing, or retirement plan. See box 1 on page R-5.

Reportable disability payments made from a retirement plan must be reported on Form 1099-R.

Generally, **do not** report payments subject to withholding of social security and Medicare taxes on this form. Report such payments on **Form W-2**, Wage and Tax Statement.

**Do not** report amounts totally exempt from tax, such as workers' compensation and Department of Veterans Affairs (VA) payments. However, if part of the distribution is taxable and part is nontaxable, report the entire distribution.

**Military retirement annuities.** Report payments to military retirees or payments of survivor benefit annuities on Form 1099-R. Report military retirement pay awarded as a property settlement to a former spouse under the name and taxpayer identification number (TIN) of the recipient, not that of the military retiree.

**Governmental section 457(b) plans.** Report on Form 1099-R, not Form W-2, income tax withholding and distributions from a governmental section 457(b) plan maintained by a state or local government employer. Distributions from a governmental section 457(b) plan to a participant or beneficiary include all amounts that are paid from the plan. See Notice 2003-20, 2003-19 I.R.B. 894, 2003-1 C.B. 894, for more information. Also see, **Section 457(b) plan distributions** on page R-8 for information on distribution codes.

**Nonqualified plans.** Report any reportable distributions from commercial annuities. Report distributions to **plan participants** from nonqualified deferred compensation plans including nongovernmental section 457(b) plans on Form W-2, not on Form 1099-R. However, report distributions to **beneficiaries** of deceased employees on Form 1099-R. See box 1 on page R-5.

**Charitable gift annuities.** If cash or capital gain property is donated in exchange for a charitable gift annuity, report distributions from the annuity on Form 1099-R. See **Charitable gift annuities** on page R-6.

**Life insurance, annuity, and endowment contracts.** Report payments of matured or redeemed annuity, endowment, and life insurance contracts. However, you do not need to file Form 1099-R to report the surrender of a life insurance contract if it is reasonable to believe that none of the payment is includible in the income of the recipient. If you are reporting the surrender of a life insurance contract, see Code 7 on page R-9.

Also report premiums paid by a trustee or custodian for the cost of current life or other insurance protection. Costs of current life insurance protection are not subject to the 10% additional tax under section 72(t). See **Cost of current life insurance protection** on page R-6.

**Section 1035 exchange.** A tax-free section 1035 exchange is the exchange of **(a)** a life insurance contract for another life insurance, endowment, or annuity contract, **(b)** an endowment contract for an annuity contract or for another endowment contract that provides for regular payments to begin no later than they would have begun under the old contract, and **(c)** an annuity contract for another annuity contract. However, the distribution of other property or the cancellation of a contract loan at the time of the exchange may be taxable and reportable on a separate Form 1099-R.

These exchanges of contracts are generally reportable on Form 1099-R. However, reporting on Form 1099-R is not required if **(a)** the exchange occurs within the same company, **(b)** the exchange is solely a contract for contract exchange, as defined above, that does not result in a designated distribution, and **(c)** the company maintains adequate records of the policyholder's basis in the contracts. For example, a life insurance contract issued by Company X received in exchange solely for another life insurance contract previously issued by Company X does not have to be reported on Form 1099-R as long as the company maintains the required records. See Rev. Proc. 92-26, 1992-1 C.B. 744.

For more information on reporting taxable exchanges, see box 1 on page R-5.

### IRA Distributions



*For deemed IRAs under section 408(q), use the rules below for traditional IRAs or Roth IRAs as applicable.*

**IRAs other than Roth IRAs.** Distributions from any individual retirement arrangement (IRA), except a Roth IRA, must be reported in boxes 1 and 2a regardless of the amount. You may check the "Taxable amount not determined" box in box 2b. But see the instructions for box 2a on page R-6 for how to report the withdrawal of IRA contributions under section 408(d)(4). Also see **Transfers** on page R-3 for information on

trustee-to-trustee transfers, including recharacterizations. The direct rollover provisions on this page do not apply to distributions from any IRA. However, taxable distributions from traditional IRAs and SEP IRAs may be rolled over into an eligible retirement plan. See section 408(d)(3). SIMPLE IRAs may also be rolled over into an eligible retirement plan, but only after the 2-year period described in section 72(t)(6).

An IRA includes all investments under one IRA plan or account. File only one Form 1099-R for distributions from all investments under one plan that are paid in 1 year to one recipient, unless you must enter different codes in box 7. You do not have to file a separate Form 1099-R for each distribution under the plan.

**Roth IRAs.** For distributions from a Roth IRA, report the gross distribution in box 1 but generally **leave box 2a blank**. Check the "Taxable amount not determined" box in box 2b. Enter Code J, Q, or T as appropriate in box 7. You may enter Code 8 or P with Code J. For the withdrawal of excess contributions, see **Box 2a** on page R-6. It is not necessary to mark the IRA/SEP/SIMPLE checkbox.

**Roth IRA conversions.** You must report an IRA that is converted or reconverted this year to a Roth IRA in boxes 1 and 2a, even if the conversion is a trustee-to-trustee transfer or is with the same trustee. Enter Code 2 or 7 in box 7 depending on the participant's age.

**Conduit IRAs.** If you know the distribution is from a conduit IRA, follow these rules. If a distribution from a conduit IRA is paid to the participant, report the full amount in boxes 1 and 2a, and use Code 1 or 7 in box 7 depending on the participant's age. If a distribution from a conduit IRA is paid to the trustee of, or is transferred to, an employer plan, report the distribution in box 1, enter 0 (zero) in box 2a, and use Code G in box 7.

## IRA Revocation

If a traditional or Roth IRA is revoked during its first 7 days (under Regulations section 1.408-6(d)(4)(ii)), the distribution from the IRA must be reported. In addition, **Form 5498**, IRA Contribution Information, must be filed to report any regular, rollover, Roth IRA conversion, SEP IRA, or SIMPLE IRA contribution to an IRA that is revoked.

If a **regular contribution** is made to a traditional or Roth IRA that later is revoked, and distribution is made to the taxpayer, enter the gross distribution in box 1. If no earnings are distributed, enter 0 (zero) in box 2a and Code 8 in box 7 for a traditional IRA and Code 8 with Code J for a Roth IRA. If earnings are distributed, enter the amount of earnings in box 2a. For a traditional IRA, enter Code 1 in box 7; for a Roth IRA, enter Code J. These earnings could be subject to the 10% early distribution tax under section 72(t). If a **rollover contribution** is made to a traditional or Roth IRA that later is revoked, and distribution is made to the taxpayer, enter in boxes 1 and 2a of Form 1099-R the gross distribution and the appropriate code in box 7 (Code J for a Roth IRA). Follow this same procedure for a transfer from a traditional or Roth IRA to another IRA of the same type that later is revoked. The distribution could be subject to the 10% early distribution tax under section 72(t).

If an IRA **conversion contribution** is made to a Roth IRA that later is revoked, and distribution is made to the taxpayer, enter the gross distribution in box 1 of Form 1099-R. If no earnings are distributed, enter 0 (zero) in box 2a and Code J in box 7. If earnings are distributed, enter the amount of the earnings in box 2a and Code J in box 7. These earnings could be subject to the 10% early distribution tax under section 72(t).

If an employer SEP (simplified employee pension) IRA or SIMPLE (savings incentive match plan for employees) IRA plan contribution is made and the SEP IRA or SIMPLE IRA is revoked by the employee, report the distribution as fully taxable.

For more information on IRAs that have been revoked, see Rev. Proc. 91-70, 1991-2 C.B. 899.

## Deductible Voluntary Employee Contributions (DECs)

If you are reporting a total distribution from a plan that includes a distribution of DECs, file two Forms 1099-R—one to report the distribution of DECs, the other to report the distribution from

the other part of the plan. Report the distribution of DECs in boxes 1 and 2a on the separate Form 1099-R. However, for the direct rollover (explained below) of funds that include DECs, file only one Form 1099-R to report the direct rollover of the entire amount.

## Direct Rollovers

You must report a direct rollover of an eligible rollover distribution. A direct rollover is the direct payment of the distribution from a qualified plan (including a governmental section 457(b) plan) or tax-sheltered annuity to a traditional IRA or other eligible retirement plan. A direct rollover may be made for the employee, for the employee's surviving spouse, or for the spouse or former spouse who is an alternate payee under a qualified domestic relations order (QDRO). If the distribution is paid to the surviving spouse, the distribution is treated in the same manner as if the spouse were the employee.

An **eligible rollover distribution** is any distribution of all or any portion of the balance to the credit of the employee (including net unrealized appreciation (NUA)) from a qualified plan (including a governmental section 457(b) plan) or a tax-sheltered annuity except:

1. One of a series of substantially equal periodic payments made at least annually over:
  - a. The life of the employee or the joint lives of the employee and the employee's designated beneficiary,
  - b. The life expectancy of the employee or the joint life and last survivor expectancy of the employee and the employee's designated beneficiary, or
  - c. A specified period of 10 years or more.
2. A required minimum distribution (under section 401(a)(9)). A plan administrator is permitted to assume there is no designated beneficiary for purposes of determining the minimum distribution.
3. Elective deferrals (under section 402(g)(3)) and earnings returned because of the section 415 limits.
4. Corrective distributions of excess deferrals (under section 402(g)) and earnings.
5. Corrective distributions of excess contributions under a qualified cash or deferred arrangement (under section 401(k)) and excess aggregate contributions (under section 401(m)) and earnings.
6. Loans treated as deemed distributions (under section 72(p)). But plan loan offset amounts can be eligible rollover distributions. See Regulations section 1.402(c)-2, Q/A-9.
7. Section 404(k) dividends.
8. Cost of current life insurance protection.
9. Distributions to a payee other than the employee, the employee's surviving spouse, or a spouse or former spouse who is an alternate payee under a QDRO.
10. Any hardship distribution.

Amounts paid under an annuity contract purchased for and distributed to a participant under a qualified plan can qualify as eligible rollover distributions. See Regulations section 1.402(c)-2, Q/A-10.

Any part of an eligible rollover distribution that is not a direct rollover is subject to 20% income tax withholding. See **Box 4** on page R-7.

**Reporting a direct rollover.** Report a direct rollover in box 1 and a 0 (zero) in box 2a. You do not have to report capital gain in box 3 or NUA in box 6. Enter Code G in box 7. Prepare the form using the name and social security number (SSN) of the person for whose benefit the funds were rolled over (generally the participant), not those of the trustee of the traditional IRA or other plan to which the funds were rolled.



*Also, use Code G with Code 4 for a surviving spouse who elects a direct rollover to an IRA or a qualified plan. Prepare the form using the name and SSN of the surviving spouse.*

If you receive a direct rollover to an IRA, you must prepare Form 5498. If you receive a direct rollover to a qualified plan (including a governmental section 457(b) plan) or tax-sheltered annuity, no report is required.



If part of the distribution is a direct rollover and part is distributed to the recipient, prepare two Forms 1099-R.

For more information on eligible rollover distributions, including substantially equal periodic payments, required minimum distributions, and plan loan offset amounts, see Regulations sections 1.402(c)-2 and 1.403(b)-2. Also, see Rev. Rul. 2002-62, 2002-42 I.R.B. 710, 2002-2 C.B. 710, for guidance on substantially equal periodic payments that began after December 31, 2002.



*For information on distributions of amounts attributable to rollover contributions separately accounted for by an eligible retirement plan, see Rev. Rul. 2004-12, 2004-7 I.R.B. 478.*

## Explanation to Recipients Before Eligible Rollover Distributions (Section 402(f) Notice)

For qualified plans, tax-sheltered annuities, and governmental section 457(b) plans, no more than 90 days and no fewer than 30 days before making an eligible rollover distribution (or before the annuity starting date), the plan administrator must provide a written explanation to each recipient (section 402(f) notice). However, if the recipient who has received the section 402(f) notice affirmatively elects a distribution, you will not fail to satisfy the timing requirements merely because you make the distribution fewer than 30 days after you provided the notice as long as you meet the requirements of Regulations section 1.402(f)-1, Q/A-2. You may provide the 402(f) notice more than 90 days before a distribution if you also provide a summary of the notice during the 90-day/30-day period before the distribution.

The notice must explain the rollover rules, the special tax treatment for lump-sum distributions, the direct rollover option (and any default procedures), the mandatory 20% withholding rules, and an explanation of how distributions from the plan to which the rollover is made may have different restrictions and tax consequences than the plan from which the rollover is made. The notice and summary are permitted to be sent either as a written paper document or through an electronic medium reasonably accessible to the recipient; see Regulations section 1.402(f)-1, Q/A-5.

For periodic payments that are eligible rollover distributions, you must provide the notice before the first payment and at least once a year as long as the payments continue. For tax-sheltered annuities, the payer must provide an explanation of the direct rollover option within the time period described above or some other reasonable period of time.

Notice 2002-3, 2002-2 I.R.B. 289, 2002-1 C.B. 289, contains model notices that the plan administrator can use to satisfy the notice requirements.

## Transfers

Generally, do not report transfers between trustees or issuers (unless they are direct rollovers from qualified plans) that involve no payment or distribution of funds to the participant, including a trustee-to-trustee transfer from one IRA to another (unless they are recharacterized IRA contributions or Roth IRA conversions) or from one tax-sheltered (section 403(b)) arrangement to another.

**IRA recharacterizations.** You must report each recharacterization of an IRA contribution. If a participant makes a contribution to an IRA (first IRA) for a year, the participant may choose to recharacterize the contribution by transferring, in a trustee-to-trustee transfer, any part of the contribution (plus earnings) to another IRA (second IRA). The contribution is treated as made to the second IRA (recharacterization). A recharacterization may be made with the same trustee or with another trustee. The trustee of the first IRA must report the recharacterization as a distribution on Form 1099-R and the contribution to the first IRA and its character on Form 5498.

Enter the fair market value (FMV) of the amount recharacterized in box 1, 0 (zero) in box 2a, and Code R in box 7 if reporting a recharacterization of a prior-year (2003) contribution or Code N if reporting a recharacterization of a contribution in the same year (2004). It is not necessary to

check the IRA/SEP/SIMPLE checkbox. For more information, see Notice 2000-30, 2000-1 C.B. 1266.

**Roth IRA conversions.** A Roth IRA conversion is not considered a trustee-to-trustee transfer. You must report a Roth IRA conversion or reconversion as a distribution. Therefore, for an IRA that is converted to a Roth IRA, even with the same trustee, you must report the amount converted in boxes 1 and 2a. Use Code 2 or 7 in box 7 depending on the participant's age.

**SIMPLE IRAs.** Do not report a trustee-to-trustee transfer from one SIMPLE IRA to another SIMPLE IRA. However, you must report as a taxable distribution in boxes 1 and 2a a trustee-to-trustee transfer from a SIMPLE IRA to an IRA that is not a SIMPLE IRA during the 2-year period beginning on the day contributions are first deposited in the individual's SIMPLE IRA by the employer. Use Code S in box 7 if appropriate.

**Section 1035 exchange.** You may have to report exchanges of insurance contracts, including an exchange under section 1035, under which any designated distribution may be made. For a section 1035 exchange that is in part taxable, file a separate Form 1099-R to report the taxable amount. See **Section 1035 exchange** on page R-1.

**Transfer of an IRA to spouse.** If you transfer an interest in an IRA from one spouse to another spouse under a divorce or separation instrument, the transfer is tax free. **Do not** report such a transfer on Form 1099-R.

## Corrective Distributions

You must report on Form 1099-R corrective distributions of excess deferrals, excess contributions and excess aggregate contributions under section 401(a) plans, section 401(k) cash or deferred arrangements, section 403(a) annuity plans, section 403(b) salary reduction agreements, and salary reduction simplified employee pensions (SARSEPs) under section 408(k)(6). Excess contributions that are recharacterized under a section 401(k) plan are treated as distributed. Corrective distributions of an excess plus earnings are reportable on Form 1099-R for the year of the distribution regardless of when the distribution is taxable to the participant. Enter Code 8, P, or in some cases D, in box 7 to designate the distribution and the year it is taxable.



*The total amount of the elective deferral is reported in Box 12 of Form W-2. See the **Instructions for Forms W-2 and W-3** for more information.*

If the excess and the earnings are taxable in two different years, you must issue two Forms 1099-R to designate the year each is taxable.

You must advise the plan participant at the time of the distribution of the year(s) in which the distribution is taxable and that it may be necessary to file an amended return for a prior tax year.

For more information about reporting corrective distributions see: the **Guide to Distribution Codes** on pages R-9 and R-10; Notice 89-32, 1989-1 C.B. 671; Notice 88-33, 1988-1 C.B. 513; Notice 87-77, 1987-2 C.B. 385; Rev. Proc. 91-44, 1991-2 C.B. 733 (SARSEPs); and the Regulations under sections 401(k), 401(m), 402(g), and 457.

**Excess deferrals.** Excess deferrals under section 402(g) can occur in 401(k) plans, 403(b) plans, or SARSEPs. If distributed by April 15 of the year following the year of deferral, the excess is taxable to the participant in the year of deferral, but the earnings are taxable in the year distributed. Except for a SARSEP, if the distribution occurs after April 15, the excess is taxable in the year of deferral **and** the year distributed. The earnings are taxable in the year distributed. For a SARSEP, excess deferrals not withdrawn by April 15 are considered regular IRA contributions subject to the IRA contribution limits. Corrective distributions of excess deferrals are not subject to Federal income tax withholding or social security and Medicare taxes. For losses on excess deferrals, see **Losses** on page R-4. See the regulations under section 457 for special rules for excess deferrals under governmental section 457(b) plans.



**Excess contributions.** Excess contributions can occur in a 401(k) plan or a SARSEP. For a 401(k) plan, if the withdrawal of the excess plus earnings occurs within 2½ months after the close of the plan year, the excess and earnings are taxable to the participant in the year deferred. But if the corrective distribution is made after the 2½-month period, or the excess contribution (not including earnings) (and excess aggregate contributions (not including earnings) in the case of a 401(k) plan) is less than \$100 (de minimus rule), the excess and earnings are taxable in the year distributed. For recharacterized excess contributions, the excess is taxable in the year a corrective distribution would have occurred. No earnings are allocated to recharacterized amounts. For a SARSEP, the **employer** must notify the participant by March 15 of the year after the year the excess contribution was made that the participant must withdraw the excess and earnings. The excess contribution is taxable to the participant in the year of deferral and the earnings are taxable in the year withdrawn. If the excess contribution (not including earnings) is less than \$100, the excess is taxable in the year of notification and the earnings are taxable in the year withdrawn. An excess contribution not withdrawn by April 15 of the year after the year of notification is considered a regular IRA contribution subject to the IRA contribution limits.

Excess contributions distributed within the 2½-month period are **not** subject to Federal income tax withholding or social security and Medicare taxes. But amounts distributed from a 401(k) plan after the 2½-month period are subject to Federal income tax withholding under section 3405.

**Excess aggregate contributions.** Excess aggregate contributions under section 401(m) can occur in 401(a), 401(k), 403(a), and 403(b) plans. A corrective distribution of excess aggregate contributions plus earnings within 2½ months after the close of the plan year is taxable to the participant in the year the contributions were made. A corrective distribution made after the 2½-month period is taxable in the year distributed. Report the gross distribution in box 1 of Form 1099-R. In box 2a, enter the excess and earnings distributed less any after-tax contributions. If the total excess contributions and excess aggregate contributions distributed are less than \$100 (excluding earnings), the distribution is taxable in the year of distribution.

A distribution made within 2½ months after the close of the plan year is **not** subject to Federal income tax withholding or social security and Medicare taxes. But amounts distributed after 2½ months are subject to Federal income tax withholding under section 3405.

**Losses.** If a corrective distribution of an excess deferral is made in a year after the year of deferral and a net loss has been allocated to the excess deferral, report the corrective distribution amount in boxes 1 and 2a of Form 1099-R for the year of the distribution with the appropriate distribution code in box 7. However, taxpayers must include the total amount of the excess deferral (unadjusted for loss) in income in the year of deferral, and they may report a loss on the tax return for the year the corrective distribution is made. Therefore, if there are no employer securities distributed, show the actual cash and/or FMV of property distributed in boxes 1 and 2a, and make no entry in box 5. If only employer securities are distributed, show the FMV of the securities in boxes 1 and 2a and make no entry in box 5 or 6. If both employer securities and other property are distributed, show the actual cash and/or FMV of the property distributed in box 1, the gross less any NUA on employer securities in box 2a, no entry in box 5, and any NUA in box 6.

### **Excess Annual Additions Under Section 415**

You must report on Form 1099-R distributions made under Regulations section 1.415-6(b)(6)(iv) of elective deferrals or a return of employee contributions (and gains attributable to such elective deferrals or employee contributions) to reduce excess annual additions arising from the allocation of forfeitures, a reasonable error in estimating a participant's compensation, or a reasonable error in determining the amount of elective deferrals that may be made for an individual under the limits of section 415.

Such distributions are not eligible rollover distributions although they are subject to Federal income tax withholding under section 3405. They are not subject to social security, Medicare, or Federal Unemployment Tax Act (FUTA) taxes. In addition, such distributions are not subject to the 10% early distribution tax under section 72(t).

You may report the distribution of elective deferrals and employee contributions (and gains attributable to such elective deferrals and employee contributions) on the same Form 1099-R. However, if you made other distributions during the year, report them on a separate Form 1099-R. Because the distribution of elective deferrals is fully taxable in the year distributed (no part of the distribution is a return of the investment in the contract), report the total amount of the distribution in boxes 1 and 2a. Leave box 5 blank, and enter Code E in box 7. For a return of employee contributions plus gains, enter the gross distribution in box 1, the gains attributable to the employee contributions being returned in box 2a, and the employee contributions being returned in box 5. Enter Code E in box 7. For more information, see Rev. Proc. 92-93, 1992-2 C.B. 505.

### **Certain Excess Amounts Under 403(b) Plans**

A corrective distribution under the Employee Plans Compliance Resolution System to the participant of contributions to a 403(b) plan (plus gains attributable to such contributions) that were in excess of the limits under section 415 or section 403(b)(2) (the exclusion allowance limit) is treated the same as corrective distributions of elective deferrals to satisfy the limits under section 415. It is taxable to the participant in the year of distribution. See **Excess Annual Additions Under Section 415** above.

### **Failing the ADP or ACP Test After a Total Distribution**

If you make a total distribution in 2004 and file a Form 1099-R with the IRS and then discover in 2005 that the plan **failed** either the section 401(k)(3) actual deferral percentage (ADP) test for 2004 and you compute excess contributions **or** the section 401(m)(2) actual contribution percentage (ACP) test and you compute excess aggregate contributions, you must recharacterize part of the total distribution as excess contributions or excess aggregate contributions. First, file a **CORRECTED** Form 1099-R for 2004 for the correct amount of the total distribution (not including the amount recharacterized as excess contributions or excess aggregate contributions). Second, file a **new** Form 1099-R for 2004 for the excess contributions or excess aggregate contributions and allocable earnings.

To avoid a late filing penalty if the new Form 1099-R is filed after the due date, enter in the bottom margin of **Form 1096**, Annual Summary and Transmittal of U.S. Information Returns, the words "Filed To Correct Excess Contributions."

You must also issue copies of the Forms 1099-R to the plan participant with an explanation of why these new forms are being issued.

### **Loans Treated as Distributions**

A loan from a qualified plan under sections 401 and 403(a) and (b), and a plan maintained by the United States, a state or political subdivision, or any of its subsidiary agencies made to a participant or beneficiary is **not** treated as a distribution from the plan if the loan satisfies the following requirements:

1. The loan is evidenced by an enforceable agreement,
2. The agreement specifies that the loan must be repaid within 5 years, except for a principal residence,
3. The loan must be repaid in substantially level installments (at least quarterly), and
4. The loan amount does not exceed the limits in section 72(p)(2)(A) (maximum limit is equal to the lesser of 50% of the vested account balance or \$50,000).

Certain exceptions, cure periods, and suspension of the repayment schedule may apply.

The loan agreement must specify the amount of the loan, the term of the loan, and the repayment schedule. The agreement may include more than one document.

If a loan fails to satisfy 1, 2, or 3, the balance of the loan is a deemed distribution. The distribution may occur at the time the loan is made or later if the loan is not repaid in accordance with the repayment schedule.

If a loan fails to satisfy 4 at the time the loan is made, the amount that exceeds the amount permitted to be loaned is a deemed distribution.

**Deemed distribution.** If a loan is treated as a deemed distribution, it is reportable on Form 1099-R using the normal taxation rules of section 72, including tax basis rules. The distribution also may be subject to the 10% early distribution tax under section 72(t). It is not eligible to be rolled over to an eligible retirement plan nor is it eligible for the 10-year tax option. On Form 1099-R, complete the appropriate boxes, including boxes 1 and 2a, and enter Code L in box 7. Also, enter Code 1, if applicable.

Interest that accrues after the deemed distribution of a loan is not an additional loan, and, therefore, is not reportable on Form 1099-R.

Loans that are treated as deemed distributions or that are actual distributions are subject to Federal income tax withholding. If a distribution occurs after the loan is made, you must withhold only if you distributed cash or property (other than employer securities) at the time of the deemed or actual distribution. See section 72(p), 72(e)(4)(A), and Regulations section 1.72(p)-1.

**Subsequent repayments.** If a participant makes any cash repayments on a loan that was reported on Form 1099-R as a deemed distribution, the repayments increase the participant's tax basis in the plan as if the repayments were after-tax contributions. However, such repayments are not treated as after-tax contributions for purposes of section 401(m) or 415(c)(2)(B).

For a deemed distribution that was reported on Form 1099-R but was **not repaid**, the deemed distribution does **not** increase the participant's basis.

If a participant's accrued benefit is reduced (offset) to repay a loan, the amount of the account balance that is offset against the loan is an actual distribution. Report it as you would any other actual distribution. Do not enter Code L in box 7.

## Missing Participants

The IRS administers a letter-forwarding program that could help plan administrators contact missing retirement plan participants (or possibly their beneficiaries). To inform individuals of their rights to benefits under a retirement plan, the IRS will forward letters from plan administrators to the missing individuals if the administrators provide the names and social security numbers (SSNs) of the missing individuals. However, the IRS cannot disclose individuals' addresses or give confirmation of letter delivery. All undelivered letters will be destroyed. For further information, see Rev. Proc. 94-22, 1994-1 C.B. 608, or contact your IRS office.

## Corrected Form 1099-R

If you filed a Form 1099-R with the IRS and later discover that there is an error on it, you must correct it as soon as possible. For example, if you transmit a direct rollover and file a Form 1099-R with the IRS reporting that none of the direct rollover is taxable by entering 0 (zero) in box 2a, and you then discover that part of the direct rollover consists of required minimum distributions under section 401(a)(9), you must file a corrected Form 1099-R. See part I in the **2004 General Instructions for Forms 1099, 1098, 5498, and W-2G**.

## Filer

The payer, trustee, or plan administrator must file Form 1099-R using the same name and employer identification number (EIN) used to deposit any tax withheld and to file **Form 945**, Annual Return of Withheld Federal Income Tax.

## Beneficiaries

If you make a distribution to a beneficiary, trust, or estate, prepare Form 1099-R using the name and TIN of the beneficiary, trust, or estate, not that of the decedent. If there are multiple beneficiaries, report on each Form 1099-R only the amount paid to the beneficiary whose name appears on the Form 1099-R, and enter the percentage in box 9a, if applicable.

## Alternate Payee Under a Qualified Domestic Relations Order (QDRO)

Distributions to an alternate payee who is a spouse or former spouse of the employee under a QDRO are reportable on Form 1099-R using the name and TIN of the alternate payee. If the alternate payee under a QDRO is a non-spouse, enter the name and TIN of the employee. However, see **Transfer of an IRA to spouse** on page R-3.

## Nonresident Aliens

If income tax is withheld under section 3405 on a distribution to a nonresident alien, report the distribution and withholding on Form 1099-R. Also file Form 945 to report the withholding. See the **Presumption Rules** in part O of the 2004 General Instructions for Forms 1099, 1098, 5498, and W-2G.

However, any payments to a nonresident alien from any trust under section 401(a), any annuity plan under 403(a), or any annuity, custodial account, or retirement income account under 403(b) are subject to withholding under section 1441. Report the distribution and withholding on **Form 1042**, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons, and **Form 1042-S**, Foreign Person's U.S. Source Income Subject to Withholding.

## Statements to Recipients

If you are required to file Form 1099-R, you must furnish a statement to the recipient. For more information about the requirement to furnish a statement to each recipient, see part H in the 2004 General Instructions for Forms 1099, 1098, 5498, and W-2G.



*Do not enter a negative amount in any box on Form 1099-R.*

## Box 1. Gross Distribution

Enter the **total amount of the distribution** before income tax or other deductions were withheld. Include direct rollovers, IRA rollovers to accepting employer plans, premiums paid by a trustee or custodian for the cost of current life or other insurance protection, and the gross amount of any IRA distribution, including a recharacterization and a Roth IRA conversion. Also include in this box distributions to **plan participants** from governmental section 457(b) plans. However, in the case of a distribution by a trust representing CDs redeemed early, report the net amount distributed. Also, see **Box 6** on page R-8.

Include in this box the **value of U.S. Savings Bonds** distributed from a plan. Enter the appropriate taxable amount in box 2a. Furnish a statement to the plan participant showing the value of each bond at the time of distribution. This will provide him or her with the information necessary to figure the interest income on each bond when it is redeemed.

Include in box 1 amounts distributed from a qualified retirement plan for which the recipient elects to pay health insurance premiums under a cafeteria plan or that are paid directly to reimburse medical care expenses incurred by the recipient (see Rev. Rul. 2003-62, 2003-25 I.R.B. 1034). Also include this amount in box 2a.

In addition to reporting distributions to beneficiaries of deceased employees, report here any **death benefit payments** made by employers that are not made as part of a pension, profit-sharing, or retirement plan. Also enter these amounts in box 2a; enter Code 4 in box 7.



*Do not report accelerated death benefits on Form 1099-R. Report them on **Form 1099-LTC**, Long-Term Care and Accelerated Death Benefits.*



For **section 1035 exchanges** that are reportable on Form 1099-R, enter the total value of the contract in box 1, 0 (zero) in box 2a, the total premiums paid in box 5, and Code 6 in box 7.

**Employer securities and other property.** If you distribute employer securities or other property, include in box 1 the FMV of the securities or other property on the date of distribution. If there is a loss, see **Losses** on page R-6.

If you are distributing worthless property only, you are not required to file Form 1099-R. However, you may file and enter 0 (zero) in boxes 1 and 2a and any after-tax employee contributions in box 5.

**Charitable gift annuities.** If cash or capital gain property is donated in exchange for a charitable gift annuity, report the total amount distributed during the year in box 1. See **Charitable gift annuities** under box 3, below.

### Box 2a. Taxable Amount

Generally, you must enter the taxable amount in box 2a. However, if you are unable to reasonably obtain the data needed to compute the **taxable amount**, leave this box blank. Do not enter excludable or tax-deferred amounts reportable in boxes 5, 6, and 8.

For a direct rollover from a qualified plan (including a governmental section 457(b) plan) or tax-sheltered annuity, for a distribution from a conduit IRA that is payable to the trustee of or is transferred to an employer plan, for an IRA recharacterization, or for a nontaxable section 1035 exchange of life insurance, annuity, or endowment contracts, enter 0 (zero) in box 2a.

**Cost of current life insurance protection.** Include current life insurance protection costs (net premium costs) that were reported in box 1. However, do not report these costs and a distribution on the same Form 1099-R. Use a separate Form 1099-R for each. For the cost of current life insurance protection, enter Code 9 in box 7. See Regulations section 1.72-16(b) and Notice 2002-8, 2002-4 I.R.B. 398, 2002-1 C.B. 398, for information on the cost of premiums paid by an employees' trust under a qualified plan for current life insurance protection taxable to plan participants or their beneficiaries.



*Certain transition rules in Notice 2002-8 regarding split-dollar arrangements expired on December 31, 2003. Also, see Rev. Rul. 2003-105, 2003-40 I.R.B. 696.*

**DECs.** Include DEC distributions in this box. Also see **Deductible Voluntary Employee Contributions (DECs)** on page R-2.

**Annuity starting date in 1998 or later.** If you made annuity payments from a qualified plan (under section 401(a), 403(a), or 403(b)) and the annuity starting date is in 1998 or later, you **must** use the simplified method (under section 72(d)(1)) to figure the taxable amount. Under this method, the expected number of payments you use to figure the taxable amount depends on whether the payments are based on the life of one or more than one person. See Notice 98-2, 1998-1 C.B. 266, and **Pub. 575**, Pension and Annuity Income, to help you figure the taxable amount to enter in box 2a.

**Annuity starting date after November 18, 1996, and before 1998.** Under the simplified method for figuring the taxable amount, the expected number of payments is based only on the primary annuitant's age on the annuity starting date. See Notice 98-2.

**Annuity starting date before November 19, 1996.** If you properly used the rules in effect before November 19, 1996, for annuities that started before that date, continue to report using those rules. No changes are necessary.

**Traditional IRA or SEP IRA.** Generally, you are not required to compute the taxable amount of a traditional IRA or SEP IRA nor designate whether any part of a distribution is a return of basis attributable to nondeductible contributions. Therefore, report the total amount distributed from a traditional IRA or SEP IRA in box 2a. This will be the same amount reported in box 1. Check the "Taxable amount not determined" box in box 2b.

However, for a distribution by a trust representing CDs redeemed early, report the net amount distributed. Do not

include any amount paid for IRA insurance protection in this box.

For a distribution of contributions plus earnings from an IRA under **section 408(d)(4)**, report the gross distribution in box 1, only the earnings in box 2a, and enter Code 8 or P, whichever is applicable, in box 7. Enter Code 1 or 4, if applicable.

For a distribution of contributions without earnings after the due date of the individual's return, under **section 408(d)(5)**, enter 0 (zero). Use Code 1 or 7 in box 7 depending on the age of the participant. For a traditional IRA and a SEP IRA rolled over to an accepting employer plan, enter the gross amount in box 1, 0 (zero) in box 2a, and Code G in box 7.

**SIMPLE IRA.** Enter the total amount distributed from a SIMPLE IRA in box 2a. For a SIMPLE IRA rolled over to an accepting employer plan after the 2-year period (see section 72(t)(6)), enter the gross amount in box 1, 0 (zero) in box 2a, and Code G in box 7.

**Roth IRA.** For a distribution from a Roth IRA, report the total distribution in box 1 and leave box 2a blank except in the case of an IRA revocation (see page R-2) and a recharacterization (see page R-3). Use Code J, Q, or T as appropriate in box 7. Use Code 8 or P, if applicable, in box 7 with Code J. **Do not** combine Codes Q or T with any other codes.

However, for the distribution of excess Roth IRA contributions, report the gross distribution in box 1 and only the earnings in box 2a. Enter Code J, and Code 8 or P in box 7.

**Roth IRA conversion.** Report the total amount converted or reconverted from a traditional IRA, SEP IRA, or SIMPLE IRA to a Roth IRA in boxes 1 and 2a. A conversion or reconversion is considered a distribution and must be reported even if it is with the same trustee and even if the conversion is done by a trustee-to-trustee transfer. For a Roth IRA conversion, use Code 2 in box 7 if the participant is under age 59½ or Code 7 if the participant is at least age 59½. Also check the IRA/SEP/SIMPLE box in box 7.

**Losses.** If a distribution is a loss, do not enter a negative amount in this box. For example, if stock is distributed from a profit-sharing plan but the value is less than the employee's after-tax contributions, enter the value of the stock in box 1, leave box 2a blank, and enter the employee's contributions in box 5.

For a plan with no after-tax contributions, even though the value of the account may have decreased, there is no loss for reporting purposes. Therefore, if there are no employer securities distributed, show the actual cash and/or FMV of property distributed in boxes 1 and 2a, and make no entry in box 5. If only employer securities are distributed, show the FMV of the securities in boxes 1 and 2a and make no entry in box 5 or 6. If both employer securities and cash or other property are distributed, show the actual cash and/or FMV of the property (including employer securities) distributed in box 1, the gross less any NUA on employer securities in box 2a, no entry in box 5, and any NUA in box 6.

**Corrective distributions.** Enter in box 2a the amount of excess deferrals, excess contributions, or excess aggregate contributions (other than employee contributions). See **Corrective Distributions** on page R-3.

### Box 2b. Taxable Amount not Determined

Enter an "X" in this box only if you are unable to reasonably obtain the data needed to compute the taxable amount. If you check this box, leave box 2a blank unless you are reporting a traditional IRA, SEP IRA, or SIMPLE IRA distribution. Except for IRAs, make every effort to compute the taxable amount. However, see **IRA Revocation** on page R-2 and **Corrective Distributions** on page R-3.

### Box 2b. Total Distribution

Enter an "X" in this box only if the payment shown in box 1 is a total distribution. A total distribution is one or more distributions within 1 tax year in which the entire balance of the account is distributed. If periodic or installment payments are made, mark this box in the year the final payment is made.

### Box 3. Capital Gain (Included in Box 2a)

If any amount is taxable as a capital gain, report it in box 3.

**Charitable gift annuities.** Report in box 3 any amount from a charitable gift annuity that is taxable as a capital gain. Report in box 1 the total amount distributed during the year. Report in box 2a the taxable amount. Advise the annuity recipient of any amount in box 3 subject to the 28% rate gain for collectibles and any unrecaptured section 1250 gain. Report in box 5 any nontaxable amount. Enter Code F in box 7. See Regulations section 1.1011-2(c), Example 8.

**Special rule for participants born before January 2, 1936 (or their beneficiaries).** For lump-sum distributions from qualified plans only, enter the amount in box 2a eligible for the capital gain election under section 1122(h)(3) of the Tax Reform Act of 1986, 1986-3 (Vol. 1) C.B. 1, 387 and section 641(f)(3) of the Economic Growth and Tax Relief Reconciliation Act of 2001. Enter the full amount eligible for the capital gain election. You should not complete this box for a direct rollover.

To compute the months of an employee's active participation before 1974, count as 12 months any part of a calendar year in which an employee actively participated under the plan; for active participation after 1973, count as 1 month any part of a month in which the employee actively participated under the plan. See the **Example** below.

Active participation begins with the first month in which an employee became a participant under the plan and ends with the earliest of:

- The month in which the employee received a lump-sum distribution under the plan;
- For an employee, other than a self-employed person or owner-employee, the month in which the employee separates from service;
- The month in which the employee dies; or
- For a self-employed person or owner-employee, the first month in which the employee becomes disabled within the meaning of section 72(m)(7).

#### Example for Computing Amount Eligible for Capital Gain Election (See Box 3.)

##### Step 1. Total Taxable Amount

A. Total distribution		XXXXX
B. Less:		
1. Current actuarial value of any annuity	XXXX	
2. Employee contributions (minus any amounts previously distributed that were not includible in the employee's gross income)	XXXX	
3. Net unrealized appreciation in the value of any employer securities that was a part of the lump-sum distribution.	XXXX	
C. Total of lines 1 through 3		XXXXX
D. Total taxable amount. Subtract line C from line A.		XXXXX

##### Step 2. Capital Gain

Total taxable amount		Months of active participation before 1974	
Line D	X		= Capital gain
		Total months of active participation	

### Box 4. Federal Income Tax Withheld

Enter any **Federal income tax withheld**. This withholding under section 3405 is subject to deposit rules and the withholding tax return is Form 945. Backup withholding does not apply. See **Pub. 15-A**, Employer's Supplemental Tax Guide, and the **Instructions for Form 945** for more withholding information.

Even though you may be using Code 1 in box 7 to designate an early distribution subject to the 10% additional tax specified in sections 72(q), (t), or (v), you are not required to withhold that tax.



*The amount withheld cannot be more than the sum of the cash and the FMV of property (excluding employer securities) received in the distribution. If a distribution consists solely of employer securities and cash (\$200 or less) in lieu of fractional shares, no withholding is required.*

To determine your withholding requirements for any designated distribution under section 3405, you must first determine whether the distribution is an eligible rollover distribution. See **Direct Rollovers** on page R-2 for a discussion of eligible rollover distributions. If the distribution is not an eligible rollover distribution, the rules for periodic payments or nonperiodic distributions apply. For purposes of withholding, distributions from any IRA are not eligible rollover distributions.

**Eligible rollover distribution; 20% withholding.** If an eligible rollover distribution is paid directly to an eligible retirement plan in a direct rollover, do not withhold Federal income tax. If any part of an eligible rollover distribution is not a direct rollover, you must withhold 20% of the part that is paid to the recipient. The recipient cannot claim exemption from the 20% withholding but may ask to have additional amounts withheld on **Form W-4P**, Withholding Certificate for Pension or Annuity Payments. If the recipient is not asking that additional amounts be withheld, Form W-4P is not required for an eligible rollover distribution because 20% withholding is mandatory.

Employer securities and plan loan offset amounts that are part of an eligible rollover distribution must be included in the amount multiplied by 20%. However, the actual amount to be withheld cannot be more than the sum of the cash and the FMV of property (excluding employer securities and plan loan offset amounts). For example, if the only part of an eligible rollover distribution that is not a direct rollover is employer securities or a plan loan offset amount, no withholding is required. However, any cash that is paid in the distribution must be used to satisfy the withholding on the employer securities or plan loan offset amount.

The payer is required to withhold 20% of eligible rollover distributions from a qualified plan's distributed annuity and on eligible rollover distributions from a governmental section 457(b) plan.

Any NUA excludable from gross income under section 402(e)(4) is not included in the amount of any eligible rollover distribution that is subject to 20% withholding.

You are not required to withhold 20% of an eligible rollover distribution that, when aggregated with other eligible rollover distributions made to one person during the year, is less than \$200.

**IRAs.** The 20% withholding does not apply to distributions from any IRA, but withholding does apply to IRAs under the rules for periodic payments and nonperiodic distributions. For withholding, assume that the entire amount of an IRA distribution is taxable (except for the distribution of contributions under section 408(d)(4), in which only the earnings are taxable, and 408(d)(5)). Generally, Roth IRA distributions are not subject to withholding except on the earnings portion of excess contributions distributed under section 408(d)(4).

An IRA recharacterization is not subject to income tax withholding.

**Periodic payments.** For periodic payments that are not eligible rollover distributions, withhold on the taxable part as though the periodic payments were wages, based on the recipient's Form W-4P. The recipient may request additional withholding on Form W-4P or claim exemption from withholding. If a recipient does not submit a Form W-4P, withhold by treating the recipient as married with three withholding allowances. See **Circular E**, Employer's Tax Guide (Pub. 15), for wage withholding tables.



*Rather than Form W-4P, military retirees should give you Form W-4, Employee's Withholding Allowance Certificate.*

**Nonperiodic distributions.** Withhold 10% of the taxable part of a nonperiodic distribution that is not an eligible rollover distribution. The recipient may request additional withholding on Form W-4P or claim exemption from withholding.




**Failure to provide TIN.** For periodic payments and nonperiodic distributions, if a payee fails to furnish his or her correct TIN to you in the manner required, or if the IRS notifies you before any distribution that the TIN furnished is incorrect, a payee cannot claim exemption from withholding. For periodic payments, withhold as if the payee was single claiming no withholding allowances. For nonperiodic payments, withhold 10%. Backup withholding does not apply.

## Box 5. Employee Contributions or Insurance Premiums

Enter the **employee's contributions** to a profit-sharing or retirement plan, or **insurance premiums** that the employee may recover tax free this year. The entry in box 5 may include any of the following: **(a)** contributions actually made by the employee over the years under the retirement or profit-sharing plan that were required to be included in the income of the employee when contributed (after-tax contributions), **(b)** contributions made by the employer but considered to have been contributed by the employee under section 72(f), **(c)** the accumulated cost of premiums paid for life insurance protection taxable to the employee in previous years and in the current year under Regulations section 1.72-16 (cost of current life insurance protection) (only if the life insurance contract itself is distributed), and **(d)** premiums paid on commercial annuities. Also report after-tax contributions directly rolled over to an IRA. Do not include contributions to any DEC, 401(k) plan, or any other contribution to a retirement plan that was not an after-tax contribution.

Generally, for qualified plans, tax-sheltered annuities, and nonqualified commercial annuities, enter in box 5 the employee contributions or insurance premiums recovered tax free during the year based on the method you used to determine the taxable amount to be entered in box 2a. If periodic payments began before 1993, you are not required to, but you are encouraged to, report in box 5.

 *If you made periodic payments from a qualified plan and the annuity starting date is after November 18, 1996, you must use the simplified method to figure the tax-free amount each year. See **Annuity starting date in 1998 or later** on page R-6.*

If a total distribution is made, the total employee contributions or insurance premiums available to be recovered tax free must be shown only in box 5. If any previous distributions were made, any amount recovered tax free in prior years must not appear in box 5.

If you are unable to reasonably obtain the data necessary to compute the taxable amount, leave boxes 2a and 5 blank, and check the first box in box 2b.

For more information, see Rev. Proc. 92-86, 1992-2 C.B. 495 and section 72(d).

For reporting charitable gift annuities, see **Charitable gift annuities** on page R-6.

## Box 6. Net Unrealized Appreciation (NUA) in Employer's Securities

Use this box if a distribution from a qualified plan includes securities of the employer corporation (or a subsidiary or parent corporation) and you can compute the NUA in the employer's securities. Enter all the NUA in employer securities if this is a lump-sum distribution. If this is not a lump-sum distribution, enter only the NUA in employer securities attributable to employee contributions. See Regulations section 1.402(a)-1(b) for the determination of the NUA. Also see Notice 89-25, Q/A-1, 1989-1 C.B. 662. Include the NUA in box 1 but not in box 2a. You do not have to complete this box for a direct rollover.


## Box 7. Distribution Code(s)

Enter an "X" in the **IRA/SEP/SIMPLE checkbox** if the distribution is from a traditional IRA, SEP IRA, or SIMPLE IRA. It is not necessary to check the box for a distribution from a Roth IRA or for an IRA recharacterization.


Enter the appropriate code(s) in box 7. Use the **Guide to Distribution Codes** on pages R-9 and R-10 to determine the

appropriate code(s) to enter in box 7 for any amounts reported on Form 1099-R. Read the codes carefully and enter them accurately because the IRS uses the codes to help determine whether the recipient has properly reported the distribution. If the codes you enter are incorrect, the IRS may improperly propose changes to the recipient's taxes.

When applicable, enter a numeric and an alpha code. For example, when using Code P for a traditional IRA distribution under section 408(d)(4), you must also enter Code 1, if it applies. For a normal distribution from a qualified plan that qualifies for the 10-year tax option, enter Codes 7 and A. For a direct rollover to an IRA or a qualified plan for the surviving spouse of a deceased participant, enter Codes 4 and G.

 *Only three numeric combinations are permitted on one Form 1099-R: Codes 8 and 1, 8 and 2, or 8 and 4. If two or more other numeric codes are applicable, you must file more than one Form 1099-R. For example, if part of a distribution is premature (Code 1) and part is not (Code 7), file one Form 1099-R for the part to which Code 1 applies and another Form 1099-R for the part to which Code 7 applies. In addition, for the distribution of excess deferrals, excess contributions, or excess aggregate contributions, parts of the distribution may be taxable in 2 or 3 different years. File separate Forms 1099-R using Code 8, D, or P to indicate the year the amount is taxable.*

Even if the employee/taxpayer is age 59½ or over, use Code 1 if a series of **substantially equal periodic payments** was modified within 5 years of the date of the first payment (within the meaning of section 72(q)(3) or (t)(4)). For example, Mr. B began receiving payments that qualified for the exception for part of a series of substantially equal periodic payments under section 72(t)(2)(A)(iv) when he was 57. When he was 61, Mr. B substantially modified the payments. Because the payments were modified within 5 years, use Code 1 in the year the payments were modified, even though Mr. B is over 59½.

 *For further guidance on what makes a series of substantially equal periodic payments, see Notice 89-25, 1989-1 C.B. 662, as modified by Rev. Rul. 2002-62, 2002-42 I.R.B. 710. Notice 2004-15, 2004-9 I.R.B. 526, allows taxpayers to use one of three methods in Notice 89-25, as modified by Rev. Rul. 2002-62, to determine whether a distribution is part of a series of substantially equal periodic payments under section 72(q)(2)(D).*

If part of an eligible rollover distribution is paid in a direct rollover and part is not, you must file a separate Form 1099-R for each part showing the appropriate code on each form. If part of a distribution is an eligible rollover distribution and part is not (e.g., a minimum distribution required by section 401(a)(9)) and the part that is an eligible rollover distribution is directly rolled over, you must file a separate Form 1099-R to report each part.

**Section 457(b) plan distributions.** Generally, a distribution from a governmental section 457(b) plan is not subject to the 10% additional tax under section 72(t). However, an early distribution from a governmental section 457(b) plan of an amount that is attributable to a rollover from another type of plan or IRA is subject to the additional tax as if the distribution were from a plan described in section 401(a) (see section 72(t)(9)). If the distribution consists solely of amounts that are not attributable to a rollover, enter Code 2 in box 7. If the distribution consists solely of amounts attributable to a rollover, then enter the appropriate code in box 7 as if the distribution were from a plan described in section 401(a). If the distribution is made up of amounts from both sources, you must file separate Forms 1099-R for each part of the distribution unless Code 2 would be entered on each form.

## Box 8. Other

Enter the current **actuarial value** of an annuity contract that is part of a lump-sum distribution. Do not include this item in boxes 1 and 2a.

To determine the value of an annuity contract, show the value as an amount equal to the current actuarial value of the annuity contract, reduced by an amount equal to the excess of

the employee's contributions over the cash and other property (not including the annuity contract) distributed.

If an annuity contract is part of a multiple recipient lump-sum distribution, enter in box 8, along with the current actuarial value, the percentage of the total annuity contract each Form 1099-R represents.

### Box 9a. Your Percentage of Total Distribution

If this is a total distribution and it is made to **more than one person**, enter the **percentage** received by the person whose name appears on Form 1099-R. You need not complete this box for any IRA distributions or for a direct rollover.

### Box 9b. Total Employee Contributions

You are not required to enter the total employee contributions in box 9b. However, because this information may be helpful to the recipient, you may choose to report them.

If you choose to report the total employee contributions, do not include any amounts recovered tax free in prior years. For a

total distribution, report the total employee contributions in box 5 rather than in box 9b.

### Boxes 10–15. State and Local Information

These boxes and Copies 1 and 2 are provided for your convenience only and need not be completed for the IRS. Use the **state and local information** boxes to report distributions and taxes for up to two states or localities. Keep the information for each state or locality separated by the broken line. If state or local income tax has been withheld on this distribution, you may enter it in boxes 10 and 13, as appropriate. In box 11, enter the abbreviated name of the state and the payer's state identification number. The state number is the payer's identification number assigned by the individual state. In box 14, enter the name of the locality. In boxes 12 and 15 you may enter the amount of the state or local distribution. Copy 1 may be used to provide information to the state or local tax department. Copy 2 may be used as the recipient's copy in filing a state or local income tax return.

Guide to Distribution Codes		
Distribution Codes	Explanations	*Used with code ...(if applicable)
1—Early distribution, no known exception.	Use Code 1 only if the employee/taxpayer has <b>not</b> reached age 59½, and if none of the exceptions under distribution Codes 2, 3, or 4 apply when the distribution is made. Use Code 1 even if the distribution is made for medical, first-time homebuyer, or qualified higher education expenses, under section 72(t).	8, D, L, or P
2—Early distribution, exception applies.	Use Code 2 only if the distribution is: <ul style="list-style-type: none"> <li>• A Roth IRA conversion (an IRA converted to a Roth IRA) or a reconversion if the participant is under age 59½,</li> <li>• An early distribution made from a qualified retirement plan or IRA because of an IRS levy under section 6331,</li> <li>• A section 457(b) plan distribution and not subject to the additional 10% tax. But see <b>Section 457(b) plan distributions</b> on page R-8 for these distributions that may be subject to the 10% additional tax, and</li> <li>• A distribution from a qualified retirement plan after separation from service where the taxpayer has reached age 55.</li> </ul>	8, D, or P
3—Disability.	For these purposes, see section 72(m)(7).	None
4—Death.	Use Code 4 regardless of the age of the employee/taxpayer to indicate payment to a decedent's beneficiary, including an estate or trust. Also use it for death benefit payments made by an employer but not made as part of a pension, profit-sharing, or retirement plan.	8, A, D, G, L, or P
5—Prohibited transaction.	Use Code 5 if there was an improper use of the account. Code 5 means the account is no longer an IRA.	None
6—Section 1035 exchange.	Use Code 6 to indicate the tax-free exchange of life insurance, annuity, or endowment contracts under section 1035.	None
7—Normal distribution.	Use Code 7: <b>(a)</b> for a normal distribution from a plan, including a traditional IRA, if the employee/taxpayer is at least age 59½, <b>(b)</b> for a Roth IRA conversion or reconversion if the participant is at least age 59½, and <b>(c)</b> to report a distribution from a life insurance, annuity, or endowment contract and for reporting income from a failed life insurance contract under sections 7702(g) and (h). See Rev. Rul. 91-17, 1991-1 C.B. 190. Use Code 7 with Code A, if applicable. Generally, use Code 7 if no other code applies. <b>Do not</b> use Code 7 for a Roth IRA distribution.	A
8—Excess contributions plus earnings/excess deferrals (and/or earnings) taxable in 2004.	Use Code 8 for an IRA or Roth IRA distribution under section 408(d)(4), unless Code P applies. Also use this code for corrective distributions of excess deferrals, excess contributions, and excess aggregate contributions, unless Code D or P applies. See <b>Corrective distributions</b> on page R-3 and <b>IRA revocation</b> on page R-2 for more information.	1, 2, 4, or J
9—Cost of current life insurance protection.	Use Code 9 to report premiums paid by a trustee or custodian for current life or other insurance protection. See <b>Box 2a</b> on page R-6 for more information.	None

**Guide to Distribution Codes**

Distribution Codes	Explanations	*Used with code ...(if applicable)
<b>A—May be eligible for 10-year tax option.</b>	Use Code A only for participants born before January 2, 1936, or their beneficiaries to indicate the distribution may be eligible for the 10-year tax option method of computing the tax on lump-sum distributions (on <b>Form 4972</b> , Tax on Lump-Sum Distributions). To determine whether the distribution may be eligible for the tax option, you need not consider whether the recipient used this method (or capital gain treatment) in the past.	4 or 7
<b>D—Excess contributions plus earnings/excess deferrals taxable in 2002.</b>	See the explanation for Code 8. Generally, do not use Code D for an IRA distribution under section 408(d)(4) or 408(d)(5).	1, 2, or 4
<b>E—Excess annual additions under section 415/certain excess amounts under section 403(b) plans.</b>	See <b>Excess Annual Additions Under Section 415</b> on page R-4.	None
<b>F—Charitable gift annuity.</b>	See <b>Charitable gift annuities</b> on page R-6.	None
<b>G—Direct rollover and rollover contribution.</b>	Use Code G for a direct rollover from a qualified plan (including a governmental section 457(b) plan) or tax-sheltered annuity to an eligible retirement plan (another qualified plan, a tax-sheltered annuity, or an IRA). See <b>Direct Rollovers</b> on page R-2. Also use Code G for certain distributions from conduit IRAs to an employer plan and IRA rollover contributions to an accepting employer plan. See <b>Conduit IRAs</b> on page R-2.	4
<b>J—Early distribution from a Roth IRA.</b>	Use Code J for a distribution from a Roth IRA when Code Q or Code T does not apply.	8 or P
<b>L—Loans treated as deemed distributions under section 72(p).</b>	Do not use Code L to report a loan offset. See <b>Loans Treated as Distributions</b> on page R-4.	1 or 4
<b>N—Recharacterized IRA contribution made for 2004.</b>	Use Code N for a recharacterization of an IRA contribution made for 2004 and recharacterized in 2004 to another type of IRA by a trustee-to-trustee transfer or with the same trustee.	None
<b>P—Excess contributions plus earnings/excess deferrals taxable in 2003.</b>	See the explanation for Code 8. The IRS suggests that anyone using Code P for the refund of an IRA contribution under section 408(d)(4), including excess Roth IRA contributions, advise payees, at the time the distribution is made, that the earnings are taxable in the year in which the contributions were made.	1, 2, 4, or J
<b>Q—Qualified distribution from a Roth IRA.</b>	Use Code Q for a distribution from a Roth IRA if <b>you know</b> that the participant meets the 5-year holding period and: <ul style="list-style-type: none"> <li>• The participant has reached age 59 ½, or</li> <li>• The participant died, or</li> <li>• The participant is disabled.</li> </ul> <b>Note:</b> <i>If any other code, such as 8 or P applies, use Code J.</i>	None
<b>R—Recharacterized IRA contribution made for 2003.</b>	Use Code R for a recharacterization of an IRA contribution made for 2003 and recharacterized in 2004 to another type of IRA by a trustee-to-trustee transfer or with the same trustee.	None
<b>S—Early distribution from a SIMPLE IRA in the first 2 years, no known exception.</b>	Use Code S only if the distribution is from a SIMPLE IRA in the first 2 years, the employee/taxpayer has not reached age 59 ½, and none of the exceptions under section 72(t) are known to apply when the distribution is made. The 2-year period begins on the day contributions are first deposited in the individual's SIMPLE IRA. Do not use Code S if Code 3 or 4 applies.	None
<b>T—Roth IRA distribution, exception applies.</b>	Use Code T for a distribution from a Roth IRA if you <b>do not know</b> if the 5-year holding period has been met but: <ul style="list-style-type: none"> <li>• The participant has reached age 59 ½, or</li> <li>• The participant died, or</li> <li>• The participant is disabled.</li> </ul> <b>Note:</b> <i>If any other code, such as 8 or P applies, use Code J.</i>	None

\*See the **Caution** for box 7 instructions on page R-8.



## Specific Instructions for Form 5498

File **Form 5498**, IRA Contribution Information, with the IRS by May 31, 2005, for each person for whom in 2004 you maintained any individual retirement arrangement (IRA), including a deemed IRA under section 408(q).

An IRA includes all investments under one IRA plan. It is not necessary to file a Form 5498 for each investment under one plan. For example, if a participant has three certificates of deposit (CDs) under one IRA plan, only one Form 5498 is required for all contributions and the fair market values (FMVs) of the CDs under the plan. However, if a participant has established more than one IRA plan with the same trustee, a separate Form 5498 must be filed for each plan.

**Contributions.** You must report contributions to any IRA on Form 5498. See the instructions under boxes 1, 2, 3, 4, 8, 9, and 10 on page R-13. If no reportable contributions were made for 2004, complete only boxes 5 and 7, and box 11 if applicable.

Report contributions to a spousal IRA under section 219(c) on a separate Form 5498 using the name and taxpayer identification number (TIN) of the spouse.

For contributions made between January 1 and April 15, 2005, trustees and issuers should obtain the participant's designation of the year for which the contributions are made.

**Direct rollovers, transfers, and recharacterizations.** You must report the receipt of a direct rollover from a qualified plan (including a governmental section 457(b) plan) or tax-sheltered annuity to an IRA. Report a direct rollover in box 2. For information on direct rollovers of eligible rollover distributions, see **Direct Rollovers** on page R-2.

If a rollover or trustee-to-trustee transfer is made from a SIMPLE IRA to an IRA that is not a SIMPLE IRA and the trustee has adequately substantiated information that the participant has not satisfied the 2-year period specified in section 72(t)(6), report the amount as a regular contribution in box 1 even if the amount exceeds \$3,000 (\$3,500 for participants 50 or older).

**Transfers.** Do not report on Form 5498 a direct trustee-to-trustee transfer from (a) a traditional IRA to another traditional IRA or to a SEP IRA, (b) a SIMPLE IRA to another SIMPLE IRA, (c) a SEP IRA to another SEP IRA or to a traditional IRA, or (d) a Roth IRA to a Roth IRA. For reporting purposes, contributions and rollovers do not include these transfers.

**Recharacterizations.** You must report each recharacterization of an IRA contribution. If a participant makes a contribution to an IRA (first IRA) for a year, the participant may choose to recharacterize the contribution by transferring, in a trustee-to-trustee transfer, any part of the contribution (plus earnings) to another IRA (second IRA). The contribution is treated as made to the second IRA (recharacterization). A recharacterization may be made with the same trustee or with another trustee. The trustee of the first IRA must report the amount contributed before the recharacterization as a contribution on Form 5498 and the recharacterization as a distribution on Form 1099-R. The trustee of the second IRA must report the amount received (FMV) in box 4 on Form 5498 and check the type of IRA box in box 7.

All recharacterized contributions received by an IRA in the same year must be totaled and reported on one Form 5498 in box 4. You may report the FMV of the account on the same Form 5498 you use to report a recharacterization of an IRA contribution and any other contributions made to the IRA for the year.

**Catch-up contributions.** Participants, who are age 50 or older by the end of the year, may be eligible to make catch-up IRA contributions or catch-up elective deferral contributions. The annual IRA regular contribution limit of \$3,000 is increased to \$3,500 for participants age 50 or older. Catch-up elective deferral contributions reported on Form 5498 may be under a salary reduction SEP (SARSEP) or under a SIMPLE IRA plan. For 2004, up to \$3,000 in catch-up elective deferral contributions may be made under a SARSEP, and up to \$1,500 to a SIMPLE IRA plan. For more information on catch-up

elective deferral contributions, see Regulations section 1.414(v)-1.

Include any catch-up amounts when reporting contributions for the year in boxes 1, 8, 9, or 10.

**Roth IRA conversions.** You must report the receipt of a conversion from an IRA to a Roth IRA even if the conversion is with the same trustee. Report the total amount converted from a traditional IRA, SEP IRA, or SIMPLE IRA to a Roth IRA in box 3. Also report a reconversion to a Roth IRA after a recharacterization in box 3.

**IRA revocation.** If a traditional IRA, Roth IRA, or SIMPLE IRA is revoked during its first 7 days (under Regulations section 1.408-6(d)(4)(ii)), Form 5498 must be filed to report any regular, rollover, IRA conversion, SEP IRA, or SIMPLE IRA contributions to a revoked IRA. For information about reporting a distribution from a revoked IRA, see **IRA Revocation** on page R-2.

**Total distribution, no contributions.** Generally, if a total distribution was made from an account during the year and no contributions, including rollovers, recharacterizations, or Roth IRA conversion amounts, were made for that year, you need not file Form 5498 nor furnish the annual statement to reflect that the FMV on December 31 was zero.

**Required minimum distributions (RMDs).** An IRA (other than a Roth IRA) owner/participant must begin taking distributions for each calendar year beginning with the calendar year in which the participant attains age 70½. The distribution for the 70½ year must be made no later than April 1 of the following calendar year; RMDs for any other year must be made no later than December 31 of the year.

For each IRA you held as of December 31 of the prior year, if an RMD is required for the year, you must provide a statement to the IRA participant by January 31 regarding the RMD using one of two alternative methods described below.

You are not required to use the same method for all IRA participants; you can use Alternative one for some IRA participants and Alternative two for the rest. Under both methods, the statement must inform the participant that you are reporting to the IRS that an RMD is required for the year. The statement can be provided in conjunction with the statement of the FMV.

If the IRA participant is deceased, and the surviving spouse is the sole beneficiary, special rules apply for RMD reporting. If the surviving spouse elects to treat the IRA as the spouse's own, then report with the surviving spouse as the owner. However, if the surviving spouse does not elect to treat the IRA as the spouse's own, then you may continue to treat the surviving spouse as a beneficiary. Until further guidance is issued, no reporting is required for IRAs of deceased participants (except where the surviving spouse elects to treat the IRA as the spouse's own, as described above).

**Alternative one.** Under this method, include in the statement the amount of the RMD with respect to the IRA for the calendar year and the date by which the distribution must be made. The amount may be calculated assuming the sole beneficiary of the IRA is not a spouse more than 10 years younger than the participant. Use the value of the account as of December 31 of the prior year to compute the amount. See **Box 11** on page R-13 for how to report.

**Alternative two.** Under this method, the statement informs the participant that a minimum distribution with respect to the IRA is required for the calendar year and the date by which such amount must be distributed. You must include an offer to furnish the participant with a calculation of the amount of the RMD if requested by the participant.

**Electronic filing.** These statements may be furnished electronically using the procedures described in part **H** of the **2004 General Instructions for Forms 1099, 1098, 5498, and W-2G**.

**Reporting to the IRS.** If an RMD is required, check box 11 (see page R-13). For example, box 11 is checked on the 2004 Form 5498 for a 2005 RMD. You are not required to report to the IRS the amount or the date by which the distribution must be made.



For more details, see Notice 2002-27, 2002-18 I.R.B. 814, and Notice 2003-3, 2003-2 I.R.B. 258. Also see the regulations under section 401(a)(9) and Notice 2003-2, 2003-2 I.R.B. 257, for transitional relief related to RMDs from annuity contracts.

**Inherited IRAs.** In the year an IRA participant dies, you, as an IRA trustee or issuer, generally must file a Form 5498 and furnish an annual statement for the decedent and a Form 5498 and an annual statement for each nonspouse beneficiary. An IRA holder must be able to identify the source of each IRA he or she holds for purposes of figuring the taxation of a distribution from an IRA. Thus, the decedent's name must be shown on the beneficiary's Form 5498 and annual statement. For example, you may enter "Brian Willow as beneficiary of Joan Maple" or something similar that signifies that the IRA was once owned by Joan Maple. You may abbreviate the word "beneficiary" as, for example, "bene."

For a spouse beneficiary, unless the spouse makes the IRA his or her own by making contributions to the account, including a rollover contribution, or by not taking distributions required by section 401(a)(9)(B), treat the spouse as a nonspouse beneficiary for reporting purposes. If the spouse makes the IRA his or her own, do not report the beneficiary designation on Form 5498 and the annual statement.

**Fair market value.** On the decedent's Form 5498 and annual statement, you must enter the FMV of the IRA on the date of death in box 5. Or you may choose the alternate reporting method and report the FMV as of the end of the year in which the decedent died. This alternate value will usually be zero because you will be reporting the end-of-year valuation on the beneficiary's Form 5498 and annual statement. The same figure should not be shown on both the beneficiary's and decedent's forms. If you choose to report using the alternate method, you must inform the executor or administrator of the decedent's estate of his or her right to request a date-of-death valuation.

On the beneficiary's Form 5498 and annual statement, the FMV of that beneficiary's share of the IRA as of the end of the year must be shown in box 5. Every year thereafter that the IRA exists, you must file Form 5498 and furnish an annual statement for each beneficiary who has not received a total distribution of his or her share of the IRA showing the FMV at the end of the year and identifying the IRA as described above.

However, if a beneficiary takes a total distribution of his or her share of the IRA in the year of death, you need not file a Form 5498 nor furnish an annual statement for that beneficiary, but you must still file Form 5498 for the decedent.

If you have no knowledge of the death of an IRA participant until after you are required to file Form 5498 (May 31), you are not required to file a corrected Form 5498 nor furnish a corrected annual statement. However, you must still provide the date-of-death valuation in a timely manner to the executor or administrator upon request.

For more information about the reporting requirements for inherited IRAs, see Rev. Proc. 89-52, 1989-2 C.B. 632.

**Special reporting for U.S. Armed Forces in designated combat zones.** A participant who is serving in or in support of the Armed Forces in a designated combat zone or qualified hazardous duty area has an additional period after the normal contribution due date of April 15 to make IRA contributions for a prior year. The period is the time the participant was in the designated zone or area plus at least 180 days. The participant must designate the IRA contribution for a prior year to claim it as a deduction on the income tax return.

If a qualifying combat zone participant makes a contribution to an IRA after April 15th and designates the contribution for a prior year, you must report the type of contribution (box 7) and the amount on Form 5498. Report the amount either for (1) the year for which the contribution was made or (2) a subsequent year.

1. If you report the contribution for the year it is made, no special reporting is required. Include the contribution in box 1 of an original Form 5498 or of a corrected Form 5498 if an original was previously filed.

2. If you report the contribution on Form 5498 in a subsequent year, you must include the year for which the contribution was made, the amount of the contribution, and one of the following indicators:

- a. Use "JG" (Joint Guard) or "AF" (Allied Force) for the Kosovo area.
- b. Use "JE" (Joint Endeavor) for the Persian Gulf area.
- c. Use "EF" (Enduring Freedom) for Afghanistan, Uzbekistan, Kyrgyzstan, Pakistan, Tajikistan, and Jordan.
- d. Use "IF" (Iraqi Freedom) for the Arabian Peninsula Areas (the Persian Gulf, the Red Sea, the Gulf of Oman, the portion of the Arabian Sea that lies north of 10 degrees north latitude and west of 68 degrees east longitude, the Gulf of Aden, and the total land areas of Iraq, Kuwait, Saudi Arabia, Oman, Bahrain, Qatar, and the United Arab Emirates and the airspace above such locations).

Under 2 above, enter the information in the blank box to the left of box 10. **Do not** enter the amount in box 1 (or box 10). For example, enter a \$2,000 IRA contribution designated for Joint Guard for the tax year 1998 as "JG 1998 2000" in the blank box.

See **Pub. 3**, Armed Forces' Tax Guide, for a list of the locations within the designated combat zones and qualified hazardous duty areas.

**Electronic/magnetic media filers.** You may request an automatic waiver from filing combat zone Forms 5498 by submitting **Form 8508**, Request for Waiver From Filing Information Returns Magnetically. Once you have received the waiver, you may report all Forms 5498 for combat zone participants on paper. Alternatively, you may report contributions made by the normal contribution due date magnetically or electronically and report the contributions made after the normal contribution due date on paper. You may also report prior year contributions by combat zone participants on a corrected Form 5498 magnetically, electronically, or on paper.

See **Electronic/Magnetic Media Reporting** in the 2004 General Instructions for Forms 1099, 1098, 5498, and W-2G for information on how to request a waiver on Form 8508.

**Corrected Form 5498.** If you filed a Form 5498 with the IRS and later discover that there is an error on it, you must correct it as soon as possible. See part I in the 2004 General Instructions for Forms 1099, 1098, 5498, and W-2G. For example, if you reported contributions as rollover contributions in box 2, and you later discover that part of the contribution was not eligible to be rolled over and was, therefore, a regular contribution that should have been reported in box 1, you must file a corrected Form 5498.

**Statements to participants.** If you are required to file Form 5498, you must provide a statement to the participant. By January 31, 2005, you must provide participants with a statement of the December 31, 2004, value of the participant's account and RMD, if applicable. Trustees of SIMPLE IRAs also must provide a statement of the account activity by January 31. Contribution information for all other types of IRAs must be provided by May 31, 2005. You are not required to provide information to the IRS or to participants as to whether a contribution is deductible or nondeductible. In addition, the participant is not required to tell you whether a contribution is deductible or nondeductible.

If you furnished a statement of the FMV of the account, and RMD if applicable, to the participant by January 31, 2005, and no reportable contributions, including rollovers, recharacterizations, or Roth IRA conversions, were made for 2004, you need not furnish another statement (or Form 5498) to the participant to report zero contributions. However, you must file Form 5498 with the IRS by May 31, 2005, to report the December 31, 2004 FMV of the account. This rule also applies to beneficiary accounts under the inherited IRA rules on this page.

For more information about the requirement to furnish statements to participants, see part H in the 2004 General Instructions for Forms 1099, 1098, 5498, and W-2G.



If you do not furnish another statement to the participant because no reportable contributions were made for the year, the statement of the FMV of the account must contain a legend designating which information is being furnished to the Internal Revenue Service.

### **Box 1. IRA Contributions (Other Than Amounts in Boxes 2–4 and 8–10)**

Enter **contributions** to a traditional IRA made in 2004 and through April 15, 2005, designated for 2004.

Report gross contributions, including the amount allocable to the cost of life insurance (see **Box 6**) and including any excess contributions, even if the excess contributions were withdrawn. If an excess contribution is treated as a contribution in a subsequent year, do not report it on Form 5498 for the subsequent year. It has already been reported as a contribution on Form 5498 for the year it was actually contributed.

Also include **employee** contributions to an IRA under a SEP plan. These are contributions made by the employee, not by the employer, that are treated as regular IRA contributions subject to the 100% of compensation and \$3,000 (\$3,500 for participants 50 or older) limits of section 219. Do not include employer SEP IRA contributions or SARSEP contributions under section 408(k)(6). Instead, include them in box 8.

Also, **do not** include in box 1 contributions to a SIMPLE IRA (report them in box 9) and a Roth IRA (report them in box 10). In addition, do not include in box 1 rollovers and recharacterizations (report rollovers in box 2 and recharacterizations in box 4), or a Roth IRA conversion amount (report in box 3).

### **Box 2. Rollover Contributions**

Enter any **rollover contributions** to any IRA received by you during 2004. Include a direct rollover from a qualified plan (including a governmental section 457(b) plan) or tax-sheltered annuity to an IRA. For the rollover of property, enter the FMV of the property on the date you receive it. This value may be different from the value of the property on the date it was distributed to the participant.

### **Box 3. Roth IRA Conversion Amount**

Enter the amount converted or reconverted from a traditional IRA, SEP IRA, or SIMPLE IRA to a Roth IRA during 2004. Do not include a rollover from one Roth IRA to another Roth IRA. Include a rollover in box 2.

### **Box 4. Recharacterized Contributions**

Enter any amounts recharacterized plus earnings from one type of IRA to another.

### **Box 5. Fair Market Value of Account**

Enter the FMV of the account on December 31. For inherited IRAs, see **Inherited IRAs** on page R-12.

### **Box 6. Life Insurance Cost Included in Box 1**

For endowment contracts only, enter the amount included in box 1 allocable to the cost of life insurance.

### **Box 7. Checkboxes**

If you did **not** enter an amount in box 1, 3, 8, 9, or 10, even if you entered an amount in box 2 or 4, you must check the appropriate box. If you entered an amount in box 1, 3, 8, 9, or 10, you may, but you do not have to, check the appropriate box.

**IRA.** Check "IRA" if you are filing Form 5498 to report information about a traditional IRA account.

**SEP.** Check "SEP" if you are filing Form 5498 to report information about a SEP IRA. If you do not know whether the account is a SEP IRA, check the "IRA" box.

**SIMPLE.** Check "SIMPLE" if you are filing Form 5498 to report information about a SIMPLE IRA account. Do not check this box for a SIMPLE 401(k) plan. See section 408(p).

**Roth IRA.** Check "Roth IRA" if you are filing Form 5498 to report information about a Roth IRA account.

### **Box 8. SEP Contributions**

Enter **employer** contributions made to a SEP IRA (including salary deferrals under a SARSEP) during 2004 including contributions made in 2004 for 2003, but not including contributions made in 2005 for 2004. **Do not** enter employee contributions to an IRA under a SEP plan. Report any **employee** contributions to an IRA under a SEP plan in box 1. Also include in box 8 SEP contributions made by a self-employed person to his or her own account.

### **Box 9. SIMPLE Contributions**

Enter **any** contributions made to a SIMPLE IRA during 2004. Do not include contributions to a SIMPLE 401(k) plan.

### **Box 10. Roth IRA Contributions**

Enter any contributions made to a Roth IRA in 2004 and through April 15, 2005, designated for 2004. However, report Roth IRA conversion amounts in box 3.

### **Box 11. Check if RMD for 2005**

Check the box if the participant must take a required minimum distribution (RMD) for 2005. You are required to check the box for the year in which the IRA participant reaches age 70½ even though the RMD for that year need not be made until April 1 of the following year. Then check the box for each subsequent year an RMD is required to be made.

On Form 5498, or in a separate statement, report the information required by **Alternative one** or **Alternative two** (see page R-11). To determine the RMD, see the regulations under sections 401(a)(9) and 408(a)(6) and (b)(3). If you use Form 5498 to report the additional information under Alternative one, enter the amount and date in the blank box to the left of box 10 on the form.



# Instructions for Form 1099-S

Section references are to the Internal Revenue Code unless otherwise noted.

## A Change to Note

The escrow number related to the reported sale may be entered in the box below the transferor's name and address. The box has been retitled "Account or escrow number (optional)."

## An Item To Note

In addition to these specific instructions, you should also use the **2004 General Instructions for Forms 1099, 1098, 5498, and W-2G**. Those general instructions include information about:

- Backup withholding
- Magnetic media and electronic reporting requirements
- Penalties
- Who must file (nominee/middleman)
- When and where to file
- Taxpayer identification numbers
- Statements to recipients
- Corrected and void returns
- Other general topics

You can get the general instructions from the IRS website at [www.irs.gov](http://www.irs.gov) or by calling 1-800-TAX-FORM (1-800-829-3676).

## Specific Instructions for Form 1099-S

File **Form 1099-S**, Proceeds From Real Estate Transactions, to report the sale or exchange of real estate.

### Reportable Real Estate

Generally, you are required to report a transaction that consists in whole or in part of the sale or exchange for money, indebtedness, property, or services of any present or future ownership interest in any of the following:

1. Improved or unimproved land, including air space.
2. Inherently permanent structures, including any residential, commercial, or industrial building.
3. A condominium unit and its appurtenant fixtures and common elements, including land.
4. Stock in a cooperative housing corporation (as defined in section 216).

**Sale or exchange.** A sale or exchange includes any transaction properly treated as a sale or exchange for Federal income tax purposes, even if the transaction is not currently taxable. For example, a sale of a principal residence may be a reportable sale even though the transferor may be entitled to exclude the gain under section 121. But see **Exceptions** on this page. Also, a transfer to a corporation that qualifies for nonrecognition of gain under section 351 is a reportable exchange. In addition, a transfer under a land contract is reportable in the year in which the parties enter into the contract.

**Ownership interest.** An ownership interest includes fee simple interests, life estates, reversions, remainders, and perpetual easements. It also includes any previously created rights to possession or use for all or part of any particular year (e.g., a leasehold, easement, or timeshare), if such rights have a remaining term of at least 30 years, including any period for which the holder may renew such rights, determined on the date of closing. For example, a preexisting leasehold on a building with an original term of 99 years and a remaining term of 35 years on the closing date is an ownership interest;

however, if the remaining term is 10 years, it is not an ownership interest. An ownership interest does **not** include any option to acquire real estate.

**Involuntary conversion.** A sale of real estate under threat or imminence of seizure, requisition, or condemnation is generally a reportable transaction.

**Timber royalties.** Report on Form 1099-S payments of timber royalties made under a pay-as-cut contract, reportable under section 6050N. For more information, see Announcement 90-129, 1990-48 I.R.B. 10.

### Exceptions

The following is a list of transactions that are **not reportable**. However, you may choose to report them; but if you do, the return filed and the statement furnished to the transferor must comply with the reporting rules.

1. Sale or exchange of a principal residence (including stock in a cooperative housing corporation) for \$250,000 or less (\$500,000 or less for married filing a joint return) and you received an acceptable **written assurance** (certification) from the seller. The certification must include information to support the conclusion that the full gain on the sale is excludable from the seller's gross income. If there are joint sellers, you must obtain a certification from each seller (whether married or not) or file Form 1099-S for any seller who does not make the certification. The certification must be signed by each seller under penalties of perjury.

You may get the certification any time on or before January 31 of the year after the year of sale. You may rely on the certification and not file or furnish Form 1099-S unless you know that any assurance on the certification is incorrect.

You must retain the certification for 4 years after the year of sale. You may retain the certification on paper, microfilm, microfiche, or in an electronic storage system.

You are not required to obtain the certification. However, if you do not obtain it, you must file and furnish Form 1099-S.

Rev. Proc. 98-20, 1998-1 C.B. 549, provides a sample acceptable certification that you may use.

2. Any transaction in which the transferor is a corporation (or is considered to be a corporation under Regulations section 1.6045-4(d)(2)); a governmental unit, including a foreign government or an international organization; or an exempt volume transferor. Under this rule, if there are exempt and nonexempt transferors, you must file Form 1099-S only for the nonexempt transferors.

An **exempt volume transferor** is someone who sold or exchanged during the year, who expects to sell or exchange during the year, or who sold or exchanged in either of the 2 previous years, at least 25 separate items of reportable real estate to at least 25 separate transferees. In addition, each item of reportable real estate must have been held, at the date of closing, or will be held, primarily for sale or resale to customers in the ordinary course of a trade or business. You are not required to report an exempt volume transferor's transactions if you receive the penalties of perjury certification required by Regulations section 1.6045-4(d)(3).

3. Any transaction that is not a sale or exchange, including a bequest, a gift (including a transaction treated as a gift under section 1041), and a financing or refinancing that is not related to the acquisition of real estate.



4. A transfer in full or partial satisfaction of a debt secured by the property. This includes a foreclosure, a transfer in lieu of foreclosure, or an abandonment.

5. A de minimus transfer for less than \$600. A transaction is de minimus if it can be determined with certainty that the total money, services, and property received or to be received is less than \$600, as measured on the closing date. For example, if a contract for sale provides for total consideration of "\$1.00 plus other valuable consideration," the transfer is not a de minimus transfer unless you can determine that the "other valuable consideration" is less than \$599, as measured on the closing date. The \$600 rule applies to the transaction as a whole, not separately to each transferor.

The following also are **not** reportable if the transaction is not related to the sale or exchange of reportable real estate:

1. An interest in crops or surface or subsurface natural resources, that is, timber (however, see **Timber royalties** on page 1), water, ores, and other natural deposits, whether or not such crops or natural resources are severed from the land.

2. A burial plot or vault.

3. A manufactured structure used as a dwelling that is manufactured and assembled at a location different from that where it is used, but only if such structure is not affixed, on the closing date, to a foundation. This exception applies to an unaffixed mobile home.

## Who Must File

Generally, the person responsible for closing the transaction, as explained in **1** below, is required to file Form 1099-S. If no one is responsible for closing, the person required to file Form 1099-S is explained in **2** below. However, you may designate the person required to file Form 1099-S in a written agreement, as explained under **3** below.

1. If you are the **person responsible for closing the transaction**, you must file Form 1099-S. If a Uniform Settlement Statement, prescribed under the Real Estate Settlement Procedures Act of 1974 (RESPA), is used, the person responsible for closing is the person listed as the settlement agent on that statement. A Uniform Settlement Statement includes any amendments, variations, or substitutions that may be prescribed under RESPA if any such form requires disclosure of the transferor and transferee, the application of the proceeds, and the name of the settlement agent or other person responsible for preparing the settlement statement.

If a Uniform Settlement Statement is not used, or no settlement agent is listed, the person responsible for closing is the person who prepares the closing statement, including a settlement statement or other written document that identifies the transferor, transferee, and real estate transferred, and that describes how the proceeds are to be disbursed.

If no closing statement is used, or if two or more statements are used, the person responsible for closing is, in the following order:

a. The transferee's attorney if the attorney is present at the delivery of either the transferee's note or a significant part of the cash proceeds to the transferor or if the attorney prepares or reviews the preparation of the documents transferring legal or equitable ownership;

b. The transferor's attorney if the attorney is present at the delivery of either the transferee's note or a significant part of the cash proceeds to the transferor or if the attorney prepares or reviews the preparation of the documents transferring legal or equitable ownership; or

c. The disbursing title or escrow company that is most significant in disbursing gross proceeds.

If there is more than one attorney described in **(a)** or **(b)**, the one whose involvement is most significant is the person responsible for filing.

2. If no one is responsible for closing the transaction as explained in **1** above, the person responsible for filing is, in the following order: **(a)** the mortgage lender, **(b)** the transferor's broker, **(c)** the transferee's broker, or **(d)** the transferee.

For purposes of **2** above, apply the following definitions:

a. **Mortgage lender** means a person who lends new funds in connection with the transaction, but only if the loan is at least partially secured by the real estate. If there is more than one lender, the one who lends the most new funds is the mortgage lender. If several lenders advance equal amounts of new funds, and no other person advances a greater amount of new funds, the mortgage lender is the one who has the security interest that is most senior in priority. Amounts advanced by the transferor are not treated as new funds.

b. **Transferor's broker** means the broker who contracts with the transferor and who is compensated for the transaction.

c. **Transferee's broker** means the broker who significantly participates in the preparation of the offer to acquire the property or who presents such offer to the transferor. If there is more than one such person, the transferee's broker is the one who most significantly participates in the preparation of the acquisition offer. If there is no such person, the one who most significantly participates in the presentation of the offer is the transferee's broker.

d. **Transferee** means the person who acquires the greatest interest in the property. If no one acquires the greatest interest, the transferee is the person listed first on the ownership transfer documents.

3. **Designation agreement.** You can enter into a written agreement at or before closing to designate who must file Form 1099-S for the transaction. The agreement will identify the person responsible for filing if such designated person signs the agreement. It is not necessary that all parties to the transaction (or that more than one party) enter into the agreement.

You may be designated in the agreement as the person who must file if you are the person responsible for closing (as explained in **1** above), the transferee's or transferor's attorney (as explained in **1** above), a title or escrow company that is most significant in terms of the gross proceeds disbursed, or the mortgage lender (as explained in **2a** above).

The designation agreement may be in any written form and may be included on the closing statement. It must:

- Identify by name and address the person designated as responsible for filing;
- Include the names and addresses of each person entering into the agreement;
- Be signed and dated by all persons entering into the agreement;
- Include the names and addresses of the transferor and transferee; and
- Include the address and any other information necessary to identify the property.

Each person who signs the agreement must retain it for 4 years.



*For each transaction, be sure that only one person is responsible for filing and that only one Form 1099-S is filed for each transferor.*

## Employees, Agents, and Partners

If an employee, agent, or partner, acting within the scope of such person's employment, agency, or partnership, participates in a real estate transaction, only the employer, principal, or partnership (not the employee, agent, or partner) may be the reporting person. However, the participation of a person listed on the Uniform Settlement Statement as the settlement agent acting as an agent of another is not attributed to the principal.

## Foreign Transferors

Sales or exchanges involving foreign transferors are reportable on Form 1099-S. For information on the transferee's responsibility to withhold income tax when a U.S. real property interest is acquired from a foreign person, see **Pub. 515**, Withholding of Tax on Nonresident Aliens and Foreign Entities, and **Form 8288**, U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests.

## Multiple Transferors

For multiple transferors of the same real estate, you must file a separate Form 1099-S for each transferor. At or before closing, you must request from the transferors an allocation of the gross proceeds among the transferors. The request and the response are not required to be in writing. You must make a reasonable effort to contact all transferors of whom you have knowledge. However, you may rely on the unchallenged response of any transferor, and you need not make additional contacts with other transferors after at least one complete allocation is received (100% of gross proceeds, whether or not received in a single response). If you receive the allocation, report gross proceeds on each Form 1099-S accordingly.

You are not required to, but you may, report gross proceeds in accordance with an allocation received after the closing date but before the due date of Form 1099-S (without extensions). However, you cannot report gross proceeds in accordance with an allocation received on or after the due date of Form 1099-S (without extensions).

If no gross proceeds are allocated to a transferor because no allocation or an incomplete allocation is received, you must report the total unallocated gross proceeds on the Form 1099-S made for that transferor. If you do not receive any allocation or you receive conflicting allocations, report on each transferor's Form 1099-S the total unallocated gross proceeds.

**Husband and wife.** If the transferors were husband and wife at the time of closing, who held the property as joint tenants, tenants by the entirety, tenants in common, or as community property, treat them as a single transferor. Only one Form 1099-S showing either of them as the transferor is required. You need not request an allocation of gross proceeds if husband and wife are the only transferors. But if you receive an uncontested allocation of gross proceeds from them, file Form 1099-S for each spouse according to the allocation. If there are other transferors, you must make a reasonable effort to contact either the husband or wife to request an allocation.

**Partnerships.** If the property is transferred by a partnership, file only one Form 1099-S for the partnership, not separate Forms 1099-S for each partner.

## Multiple Assets Sold

If real estate is sold or exchanged and other assets are sold or exchanged in the same transaction, report the total gross proceeds from the entire transaction on Form 1099-S.

## Taxpayer Identification Numbers (TINs)

You must request the transferor's TIN no later than the time of closing. The TIN request need not be made in a separate mailing. Rather, it may be made in person, in a mailing that includes other items, or electronically. The transferor is required to furnish his or her TIN and to certify that the TIN is correct. For U.S. persons (including U.S. resident aliens), you may request a TIN on **Form W-9, Request for Taxpayer Identification Number and Certification**. Foreign persons must provide their TIN to you on the appropriate Form W-8. See part **F** of the **2004 General Instructions for Forms 1099, 1098, 5498, and W-2G**.

Alternatively, you may provide a written statement to the transferor similar to the following: "You are required by law to provide (insert name of person responsible for filing) with your correct taxpayer identification number. If you do not provide (insert name of person responsible for filing) with your correct taxpayer identification number, you may be subject to civil or criminal penalties imposed by law."

The solicitation must contain space for the name, address, and TIN of the transferor, and a place to certify under penalties of perjury that the TIN furnished is the correct TIN of the transferor. The certification must read similar to: "Under penalties of perjury, I certify that I am a U.S. person or U.S. resident alien and the number shown on this statement is my correct taxpayer identification number."

If you use a Uniform Settlement Statement (under RESPA), you may provide a copy of such statement, appropriately

modified to solicit the TIN, to the transferor. Keep the Form W-9 or substitute form in your records for 4 years.

## Separate Charge Prohibited

You may not charge your customers a separate fee for complying with the Form 1099-S filing requirements. However, you may take into account the cost of filing the form in setting the fees you charge your customers for services in a real estate transaction.

## Statements to Transferors

If you are required to file Form 1099-S, you must provide a statement to the transferor. Furnish a copy of Form 1099-S or an acceptable substitute statement to each transferor. For more information about the requirement to furnish a statement to the transferor, see part **H** in the **2004 General Instructions for Forms 1099, 1098, 5498, and W-2G**.

## Filer's Name and Address Box

Enter the name, address, and telephone number of the person who is filing Form 1099-S. This information must be the same as the filer information reported on Form 1096.

## Transferor's Name and Address Box

Enter the name and address of the seller or other transferor of the real estate. If a husband and wife are joint sellers, it is only necessary to enter one name and the TIN for that person on the form.

## Box 1. Date of Closing

Enter the closing date. On a Uniform Settlement Statement (under RESPA), the closing date is the settlement date. If a Uniform Settlement Statement is not used, the closing date is the earlier of the date title transfers or the date the economic burdens and benefits of ownership shift to the transferee.

## Box 2. Gross Proceeds

Enter the gross proceeds from the sale or exchange of real estate. Gross proceeds means any cash received or to be received for the real property by or on behalf of the transferor, including the stated principal amount of a note payable to or for the benefit of the transferor and including a note or mortgage paid off at settlement. If the transferee assumes a liability of the transferor or takes the property subject to a liability, such liability is treated as cash and is includible as part of gross proceeds. For a contingent payment transaction, include the maximum determinable proceeds. Also see **Multiple Assets Sold** above.

If you are reporting a **like-kind exchange** of property for which no gross proceeds are reportable, enter 0 (zero) in box 2 and enter an "X" in the checkbox in box 4.

Gross proceeds do not include the value of property or services received or to be received by, or on behalf of, the transferor or separately stated cash received for personal property, such as draperies, carpeting, or a washer and dryer.

Do not reduce gross proceeds by any expenses paid by the transferor, such as sales commissions, deed preparation, advertising, and legal expenses. If a Uniform Settlement Statement (under RESPA) is used for a transfer of real estate for cash and notes only, gross proceeds generally will be the contract sales price shown on that statement. If other property or services were exchanged, see **Box 4. Check Here if the Transferor Received or Will Receive Property or Services as Part of the Consideration** on page S-4.

**Contingent payment transaction.** A contingent payment transaction is one in which the receipt, by or on behalf of the transferor, is subject to a contingency. The maximum determinable proceeds means the greatest amount of gross proceeds possible if all the contingencies are satisfied. If the maximum amount of gross proceeds cannot be determined with certainty, the maximum determinable proceeds are the greatest amount that can be determined with certainty.

### **Box 3. Address or Legal Description (Including City, State, and ZIP Code)**

Enter the address of the property, including the city, state, and ZIP code. If the address does not sufficiently identify the property, also enter a legal description, such as section, lot, and block. For timber royalties, enter "Timber."

### **Box 4. Check Here if the Transferor Received or Will Receive Property or Services as Part of the Consideration**

If the transferor received or will receive **property** (other than cash and consideration treated as cash in computing gross proceeds) **or services** as part of the consideration for the property, enter an "X" in the checkbox in box 4.

### **Box 5. Buyer's Part of Real Estate Tax**

For a real estate transaction involving a residence, enter the real estate tax paid in advance that is allocable to the buyer. You do not have to report an amount as allocable to the buyer for real estate taxes paid in arrears. You may use the appropriate information included on the HUD-1, or comparable form, provided at closing. For example, a residence is sold in a

county where the real estate tax is paid annually in advance. The seller paid real estate taxes of \$1,200 for the year in which the sale took place. The sale occurred at the end of the 9th month of the real estate tax year. Therefore, \$300 of the tax paid in advance is allocated to the buyer, by reference to the amount of real estate tax shown on the HUD-1 as paid by the seller in advance, and is reported in box 5. See Notice 93-4, 1993-1 C.B. 295.



*You are not required to indicate on Form 1099-S that the transferor's (seller's) financing was Federally subsidized. Also, you are not required to enter the following:*

- *Both total gross proceeds **and** the allocated gross proceeds for a multiple transferor transaction (enter either one or the other);*
- *An indication that the transferor may receive property or services for an obligation having a stated principal amount; or*
- *An indication that, in connection with a contingent payment transaction, the transferor may receive gross proceeds that cannot be determined with certainty under the regulations and is not included in gross proceeds.*



# Instructions for Forms 1099-SA and 5498-SA

Section references are to the Internal Revenue Code unless otherwise noted.

## What's New for 2004

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 added new Code section 223, Health Savings Accounts (HSAs), that permits eligible individuals to establish HSAs after December 31, 2003 (P.L. 108-173). HSAs, used in combination with a high deductible health plan, receive tax-favored contributions from or for an eligible individual that are distributed tax free when used to pay qualified medical expenses. Because the reporting of HSAs is similar to that of Archer MSAs, Forms 1099-MSA and 5498-MSA have been revised to include HSAs. In addition the form numbers and titles have been revised to include HSAs. For additional information on HSAs, see:

- Notice 2004-2, which is on page 269 of Internal Revenue Bulletin 2004-2 at [www.irs.gov/pub/irs-irbs/irb04-02](http://www.irs.gov/pub/irs-irbs/irb04-02);
- Notice 2004-23, which is on page 725 of Internal Revenue Bulletin 2004-15 at [www.irs.gov/pub/irs-irbs/irb04-15](http://www.irs.gov/pub/irs-irbs/irb04-15);
- Notice 2004-25 which is on page 727 of Internal Revenue Bulletin 2004-15 at [www.irs.gov/pub/irs-irbs/irb04-15](http://www.irs.gov/pub/irs-irbs/irb04-15);
- Rev. Rul. 2004-38, which is on page 717 of Internal Revenue Bulletin 2004-15 at [www.irs.gov/pub/irs-irbs/irb04-15](http://www.irs.gov/pub/irs-irbs/irb04-15);
- Rev. Proc. 2004-22, which is on page 727 of Internal Revenue Bulletin 2004-15 at [www.irs.gov/pub/irs-irbs/irb04-15](http://www.irs.gov/pub/irs-irbs/irb04-15);
- Rev. Rul. 2004-45, which is on page 971 of Internal Revenue Bulletin 2004-22 at [www.irs.gov/pub/irs-irbs/irb04-22](http://www.irs.gov/pub/irs-irbs/irb04-22);
- Notice 2004-43, on page 10 of Internal Revenue Bulletin 2004-27 at [www.irs.gov/pub/irs-irbs/irb04-27](http://www.irs.gov/pub/irs-irbs/irb04-27); and
- Notice 2004-50, which is on page 196 of Internal Revenue Bulletin 2004-33, available at [www.irs.gov/pub/irs-irbs/irb04-33.pdf](http://www.irs.gov/pub/irs-irbs/irb04-33.pdf).

Also, based on the 2003 act, any reference to a Medicare+Choice MSA includes a Medicare Advantage (MA) MSA.

**Note for 2004 only.** Because **Form 1096**, Annual Summary and Transmittal of U.S. Information Returns, was released for print prior to the new revision, enter an "X" in the box for Form 1099-MSA or Form 5498-MSA when transmitting Forms 1099-SA and 5498-SA, respectively.

## An Item To Note

In addition to these specific instructions, you should also use the **2004 General Instructions for Forms 1099, 1098, 5498, and W-2G**. Those general instructions include information about:

- Backup withholding
- Magnetic media and electronic reporting requirements
- Penalties
- Who must file (nominee/middleman)
- When and where to file
- Taxpayer identification numbers
- Statements to recipients
- Corrected and void returns
- Other general topics

You can get the general instructions from the IRS website at [www.irs.gov](http://www.irs.gov) or by calling 1-800-TAX-FORM (1-800-829-3676).

## Specific Instructions for Form 1099-SA

File **Form 1099-SA**, Distributions From an HSA, Archer MSA, or Medicare+Choice MSA, to report distributions made from an HSA, Archer MSA, or Medicare+Choice MSA (M+C MSA). The

distribution may have been paid directly to a medical service provider or to the account holder. A separate return must be filed for each plan type.

**Transfers.** Do not report a trustee-to-trustee transfer from one Archer MSA or M+C MSA to another Archer MSA or M+C MSA, one Archer MSA to an HSA, or from one HSA to another HSA. For reporting purposes, contributions and rollovers do not include transfers.

## Death of Account Holder

**Archer MSAs and M+C MSAs.** If the account holder dies and the beneficiary is the spouse:

- The spouse becomes the account holder of the Archer MSA,
- The spouse may continue an M+C MSA, but no new contributions may be made to the account, and
- Distributions from an Archer MSA or M+C MSA are taxed under the rules that apply to Archer MSAs, not M+C MSAs.

If the beneficiary is not the spouse or there is no named beneficiary, the account ceases to be an Archer MSA or M+C MSA and the fair market value (FMV) is reported.

**Distribution in year of death.** If you learn of the account holder's death and make a final distribution to the beneficiary in the **year of death**, issue a final Form 1099-SA and enter in:

- Box 1, the gross distribution;
- Box 3, code **4** (see page SA-2); and
- Box 4, the FMV of the account on the date of death.

If the beneficiary is the estate, enter the estate's name and taxpayer identification number (TIN) in place of the recipient's on the form.

**Distribution after year of death.** If you learn of the death of the account holder and make a final distribution **after the year of death**, issue a final Form 1099-SA in the year you learned of the death of the account holder. Enter in:

- Box 1, the gross distribution;
- Box 3, one of the following codes (see page SA-2):
  - 1**—if the beneficiary is the spouse,
  - 4**—if the beneficiary is the estate, or
  - 6**—if the beneficiary is not the spouse or estate;
- Box 4, the FMV of the account on the date of death.

**HSAs.** If the account holder dies and:

- The named beneficiary is the surviving spouse, the surviving spouse becomes the account holder of the HSA.
- If the HSA passes to a person other than the surviving spouse, the HSA ceases to be an HSA on the date of the account holder's death. If there is no designated beneficiary, or the account passes to the account holder's estate, the FMV of the account as of the date of death is required to be reported in box 4. Follow the rules and coding above under **Distribution in year of death** and **Distribution after year of death**.

**Statements to recipients.** If you are required to file Form 1099-SA, you must provide a statement to the recipient. For more information about the requirement to furnish a Form 1099-SA or acceptable substitute statement to recipients, see part **H** in the **2004 General Instructions for Forms 1099, 1098, 5498, and W-2G**.

**Box 1. Gross distribution.** Enter the total amount of the distribution. Include any earnings separately reported in box 2. You are not required to determine the taxable amount of a distribution.



**Box 2. Earnings on excess contributions.** Enter the total earnings distributed with any excess HSA or Archer MSA contributions returned by the due date of the account holder's tax return. Include this amount in box 1. Report earnings on other distributions only in box 1. **Do not** report excess M+C MSA contributions returned to the Secretary of Health and Human Services or his or her representative.

**Box 3. Distribution code.** Enter the appropriate distribution code from the list below that shows the type of distribution.

- |   |  |
|---|--|
| 1—Normal distributions  | Use this code for normal distributions to the account holder and any direct payments to a medical service provider. Use this code if no other code applies. Also, see <b>Distribution after year of death</b> on page SA-1.  |
| 2—Excess contributions  | Use this code for distributions of excess HSA or Archer MSA contributions. <b>Do not</b> use this code for excess M+C MSA contributions returned to the Secretary of Health and Human Services or his or her representative. |
| 3—Disability  | Use this code if you made distributions after the account holder was disabled (see section 72(m)(7)).  |
| 4—Death distribution other than code 6                              | Use this code for payments to a decedent's estate in the year of death. Also use this code for payments to an estate after the year of death. Do not use with code 6. See <b>Death of Account Holder</b> on page SA-1.       |
| 5—Prohibited transaction  | See sections 220(e)(2) and 223(e)(2).  |
| 6—Death distribution after year of death to a nonspouse beneficiary | Use this code for payments to a decedent's nonspouse beneficiary, other than an estate, after the year of death. Do not use with code 4.   |

**Box 4. FMV on date of death.** If the account holder died, enter the FMV of the account on the date of death. See **Death of Account Holder** on page SA-1.

**Box 5. Checkbox.** Check the box to indicate if this distribution was from an HSA, Archer MSA, or M+C MSA.

## Specific Instructions for Form 5498-SA

File **Form 5498-SA**, HSA, Archer MSA, or Medicare+Choice MSA Information, with the IRS on or before May 31, 2005, for each person for whom you maintained an HSA, Archer MSA, or Medicare+Choice MSA (M+C MSA) during 2004. You are required to file if you are the trustee or custodian of an HSA, Archer MSA, or M+C MSA. A separate form is required for each type of plan.

For HSA or Archer MSA contributions made between January 1 and April 15, 2005, you should obtain the participant's designation of the year for which the contributions are made.

**Rollovers.** You must report the receipt of a rollover from one Archer MSA to another Archer MSA, and receipt of a rollover from an Archer MSA or an HSA to an HSA in box 4.

**Transfers.** Do not report a trustee-to-trustee transfer from one Archer MSA or M+C MSA to another Archer MSA or M+C MSA,

from an Archer MSA to an HSA, or from one HSA to another HSA. For reporting purposes, contributions and rollovers do not include these transfers.



*Rollovers from an IRA, a health reimbursement arrangement (HRA), or a flexible spending arrangement (FSA) to an HSA are not permitted.*

**Total distribution, no contributions.** Generally, if a total distribution was made from an HSA or Archer MSA during the year and no contributions were made for that year, you need not file Form 5498-SA nor furnish a statement to the participant to reflect that the FMV on December 31 was zero.

**Death of account holder.** In the year an HSA, Archer MSA, or M+C MSA owner dies, generally you must file a Form 5498-SA and furnish a statement to the decedent. If the beneficiary is the spouse:

- The spouse becomes the account holder of the HSA or Archer MSA,
- The spouse may continue an M+C MSA, but no new contributions may be made to the account, and
- Distributions from an Archer MSA or M+C MSA are taxed under the rules that apply to Archer MSAs, not M+C MSAs. For rules that apply to HSAs, see Notice 2004-2, Q/A-31.

If the beneficiary is not the spouse or there is no named beneficiary, the account ceases to be an HSA, Archer MSA, or M+C MSA.

**Statements to participants.** If you are required to file Form 5498-SA, you must provide a statement to the participant (generally Copy B) by May 31, 2005. You may, but you are not required to, provide participants with a statement of the December 31, 2004, FMV of the participant's account by January 31, 2005. For more information about statements to participants, see part **H** in the **2004 General Instructions for Forms 1099, 1098, 5498, and W-2G**.

**Box 1. Employee or self-employed person's Archer MSA contributions made in 2004 and 2005 for 2004.** Enter the employee's or self-employed person's regular contributions to the Archer MSA made in 2004 and through April 15, 2005, for 2004. Report gross contributions, including any excess contributions, even if the excess contributions were withdrawn. No HSA information is to be reported in box 1.

**Box 2. Total contributions made in 2004.** Enter the total HSA or Archer MSA contributions made in **2004**. Include any contribution made in 2004 for 2003. You may, but you are not required to, report the total M+C MSA contributions the Secretary of Health and Human Services or his or her representative made in 2004.

**Box 3. Total HSA or Archer MSA contributions made in 2005 for 2004.** Enter the total HSA or Archer MSA contributions made in **2005 for 2004**.

**Box 4. Rollover contributions.** Enter rollover contributions to the HSA or Archer MSA received by you during 2004.

**Box 5. Fair market value of HSA, Archer MSA, or M+C MSA.** Enter the FMV of the account on December 31, 2004.

**Box 6. Checkbox.** Check the box to indicate if this account is an HSA, Archer MSA, or M+C MSA.

# Instructions for Form 5498-ESA

Section references are to the Internal Revenue Code unless otherwise noted.

## An Item To Note

In addition to these specific instructions, you should also use the **2004 General Instructions for Forms 1099, 1098, 5498, and W-2G**. Those general instructions include information about:

- Backup withholding
- Magnetic media and electronic reporting requirements
- Penalties
- Who must file (nominee/middleman)
- When and where to file
- Taxpayer identification numbers
- Statements to recipients
- Corrected and void returns
- Other general topics

You can get the general instructions from the IRS website at [www.irs.gov](http://www.irs.gov) or by calling 1-800-TAX-FORM (1-800-829-3676).

## Specific Instructions for Form 5498-ESA

File **Form 5498-ESA**, Coverdell ESA Contribution Information, with the IRS by May 31, 2005, for each person for whom you maintained any Coverdell education savings account (ESA) during 2004.

**Contributions.** You must report contributions, including rollover contributions, to any Coverdell ESA on Form 5498-ESA. See the instructions under Boxes 1 and 2. If no reportable contributions were made for 2004, no return is required.

For contributions made between January 1 and April 15, 2005, trustees and issuers should obtain the participant's designation of the year for which the contributions are made.

**Transfers.** Report on Form 5498-ESA all rollovers including a direct trustee-to-trustee transfer from one Coverdell ESA to another Coverdell ESA. A rollover can be made from certain U.S. Savings Bonds or another Coverdell ESA. Any amount distributed from a Coverdell ESA may be rolled over to another Coverdell ESA and is not taxable if it is for the benefit of the same beneficiary or certain family members.

**Total distribution, no contributions.** Generally, if a total distribution was made from an account during the year and no contributions including rollovers were made for that year, you need not file Form 5498-ESA.

**Distributions.** Report distributions from any Coverdell ESA on **Form 1099-Q**, Payments From Qualified Education Programs (Under Sections 529 and 530). Any change in the beneficiary of the Coverdell ESA is not treated as a distribution if the new beneficiary is a family member (see below) of the prior beneficiary and has not reached the age of 30 (except for a beneficiary with special needs).

**Family member.** A family member of the designated beneficiary includes their spouse, children and their descendants, stepchildren and their descendants, siblings and their children, parents and grandparents, stepparents, and their spouses. It also includes the first cousins of the designated beneficiary.

**Corrected Form 5498-ESA.** If you filed a Form 5498-ESA with the IRS and later discover that there is an error on it, you must correct it as soon as possible. See part I in the General Instructions for Forms 1099, 1098, 5498, and W-2G. For example, if you reported a contribution as a rollover contribution in box 2, and you later discover that part of the contribution was a regular contribution that should have been reported in box 1, you must file a corrected Form 5498-ESA.

**Statements to participants.** If you are required to file Form 5498-ESA, you must provide a statement to the beneficiary (participant) by May 2, 2005.

For more information about the requirement to furnish statements to participants, see part H in the General Instructions for Forms 1099, 1098, 5498, and W-2G.

## Coverdell Education Savings Account

A Coverdell education savings account is a trust or custodial account created or organized in the United States exclusively for the purpose of paying the qualified education expenses of an individual who is the designated beneficiary of the trust. The account must be designated as a Coverdell ESA at the time it is created or organized in order to be treated as a Coverdell ESA for tax purposes. The governing instrument creating the trust must meet the following requirements.

1. No contribution will be accepted:
  - a. Unless it is in cash,
  - b. If it is made after the date on which such beneficiary attains age 18, except for beneficiaries with special needs, or
  - c. Except for rollover contributions, if the contribution would result in aggregate contributions exceeding \$2,000 for the year.
2. The trustee or custodian is a bank or other person approved by the IRS to serve as a nonbank trustee or custodian.
3. The trust assets may not be invested in life insurance contracts.
4. The assets of the trust cannot be commingled with other property except in a common trust fund or common investment fund, and
5. Any balance to the credit of the designated beneficiary must be distributed within 30 days after the date on which:
  - a. The beneficiary attains age 30 (except for a beneficiary with special needs) or
  - b. The beneficiary dies.

## Box 1. Contributions (Other Than Amounts in Box 2)

Enter **contributions** to a Coverdell ESA made in 2004 and through April 15, 2005, designated for 2004.

**Do not** include in box 1 rollovers (report rollovers in box 2).

## Box 2. Rollover Contributions

Enter any **rollover contributions** (including trustee-to-trustee transfers) to this Coverdell ESA received by you during 2004 (see **Transfers** above).



# Instructions for Forms W-2G and 5754

Section references are to the Internal Revenue Code.

## What's New for 2004

**Regular gambling withholding.** Recent legislation reduced the regular gambling withholding rate. The regular gambling withholding rate will be 25% (33.33% for certain noncash payments) for reportable payments.

**Backup withholding.** Recent legislation also reduced the backup withholding rate to 28%.

## An Item To Note

In addition to these specific instructions, you should also use the **2004 General Instructions for Forms 1099, 1098, 5498, and W-2G**. Those general instructions include information about:

- Backup withholding
- Magnetic media and electronic reporting requirements
- Penalties
- When and where to file
- Taxpayer identification numbers
- Statements to recipients
- Corrected and void returns
- Other general topics

You can get the general instructions from the IRS website at [www.irs.gov](http://www.irs.gov) or by calling 1-800-TAX-FORM (1-800-829-3676).

## Specific Instructions for Form W-2G

File **Form W-2G**, Certain Gambling Winnings, to report gambling winnings and any Federal income tax withheld on those winnings. The requirements for reporting and withholding depend on the type of gambling, the amount of the gambling winnings, and generally the ratio of the winnings to the wager.

The types of gambling are discussed in these instructions under the following three headings:

1. **Horse Racing, Dog Racing, Jai Alai, and Other Wagering Transactions Not Discussed Later**
2. **Sweepstakes, Wagering Pools, and Lotteries**
3. **Bingo, Keno, and Slot Machines**

## Tax-Exempt Organizations

A tax-exempt organization conducting gaming activities may be required to withhold income tax and report on Form W-2G. See **Pub. 3079**, Gaming Publication for Tax-Exempt Organizations.

## Reportable Gambling Winnings

Generally, gambling winnings are reportable if the amount paid reduced, at the option of the payer, by the wager is **(a)** \$600 or more and **(b)** at least 300 times the amount of the wager. However, these requirements do not apply to winnings from bingo, keno, and slot machines. Gambling winnings for these games are reportable if:

- The winnings (reduced by the wager) are \$1,500 or more from a **keno** game.
- The winnings (not reduced by the wager) are \$1,200 or more from a **bingo** game or **slot machine**.

If you pay reportable gambling winnings, you must file Form W-2G with the IRS and provide a statement to the winner (Copies B and C of Form W-2G).

## Withholding

There are two types of withholding on gambling winnings: **(1)** regular gambling withholding at 25% (33.33% for certain noncash payments) and **(2)** backup withholding at 28%. If a payment is already subject to regular gambling withholding, it is not subject to backup withholding.

## Regular Gambling Withholding

You may be required to withhold 25% of gambling winnings for Federal income tax. This is referred to as regular gambling withholding. Withhold at the 25% rate if the winnings are more than \$5,000 and are from:

- Sweepstakes,
- Wagering pools,
- Lotteries, and
- Other wagering transactions if the winnings are at least 300 times the amount wagered.

**Do not** withhold at the 25% rate on winnings from bingo, keno, or slot machines or any other wagering transaction if the winnings are \$5,000 or less. However, see **Backup Withholding** below.

Regular gambling withholding applies to the total amount of gross proceeds (the amount of winnings less the amount wagered), not merely to the amount in excess of \$5,000.

Report the amount you withheld in box 2 of Form W-2G. Also file **Form 945**, Annual Return of Withheld Federal Income Tax, to report all your gambling withholding.

**Noncash payments.** A noncash payment, such as a car, must be taken into account at its fair market value (FMV) for purposes of reporting and withholding. If the FMV exceeds \$5,000, after deducting the price of the wager, the winnings are subject to 25% regular gambling withholding. The tax you must withhold is computed and paid under either of the following two methods:

1. The **winner pays** the withholding tax to the payer. In this case, the withholding is 25% of the FMV of the noncash payment minus the amount of the wager.
2. The **payer pays** the withholding tax. In this case, the withholding is 33.33% of the FMV of the noncash payment minus the amount of the wager.

If you use method **2**, enter the sum of the noncash payment and the withholding tax in box 1 of Form W-2G and the withholding tax paid by the payer in box 2.

## Backup Withholding

You may be required to withhold 28% of gambling winnings (including winnings from bingo, keno, and slot machines) for Federal income tax. This is referred to as backup withholding. You should backup withhold at the 28% rate if:

- The winner does not furnish a correct taxpayer identification number (TIN) and
- 25% has not been withheld or the winnings are from bingo, keno, or slot machines.

Backup withholding applies to the total amount of the winnings reduced, at the option of the payer, by the amount wagered. This means the total amount, not just the payments in excess of \$600, \$1,200, or \$1,500, is subject to backup withholding at 28%.



Report the amount you withheld in box 2 of Form W-2G. Also file Form 945 to report all backup withholding. You may use **Form W-9**, Request for Taxpayer Identification Number and Certification, to request the TIN of the recipient.

See the instructions on the following pages for each type of gambling for detailed rules on backup withholding.

### Foreign Persons

Payments of gambling winnings to a nonresident alien individual or a foreign entity are not subject to reporting or withholding on Form W-2G. Generally, gambling winnings paid to a foreign person are subject to 30% withholding under sections 1441(a) and 1442(a) and are reportable on **Form 1042**, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons, and **Form 1042-S**, Foreign Person's U.S. Source Income Subject to Withholding. Winnings of a nonresident alien from blackjack, baccarat, craps, roulette, or big-6 wheel are not subject to withholding or reporting. See **Pub. 515**, Withholding of Tax on Nonresident Aliens and Foreign Entities.

### State Tax Information

If state income tax withholding is required on gambling winnings in your state, you may want to complete boxes 13 and 14 on Form W-2G. Copy 1 of the form may be used to provide information to the state, and Copy 2 may be used as the winner's copy for use in filing a state income tax return. A state identification number is assigned by each individual state.

### Form 5754

If the person receiving the winnings is not the actual winner, or is a member of a group of winners, see **Specific Instructions for Form 5754** on page W-4.

### Statements to Winners

If you are required to file Form W-2G, you must also provide a statement to the winner. For information about the requirement to furnish a statement to the winner, see part H in the 2004 General Instructions for Forms 1099, 1098, 5498, and W-2G. You may furnish Copies B and C of Form W-2G.

## 1. Horse Racing, Dog Racing, Jai Alai, and Other Wagering Transactions Not Discussed Later

File Form W-2G for every person to whom you pay \$600 or more in gambling winnings if such winnings are at least 300 times the amount of the wager. If the person presenting the ticket for payment is the sole owner of the ticket, complete Form W-2G showing the name, address, and TIN of the winner. If regular gambling withholding is required, the winner must sign Form W-2G, under penalties of perjury, stating that he or she is the sole owner and that the information listed on the form is correct.

### Withholding

You must withhold Federal income tax, at the rate of 25% (regular gambling withholding), from the amount of winnings less the amount wagered. Do this if the winnings less the wager exceed \$5,000 and if the winnings are at least 300 times the amount of the wager.

If the winner of reportable gambling winnings does not provide a TIN, you must backup withhold at the rate of 28% on any such winnings that are not subject to 25% regular gambling withholding. That is, backup withholding applies if the winnings are at least \$600 but not more than \$5,000 and are at least 300 times the wager. Figure the 28% backup withholding on the amount of the winnings reduced, at the option of the payer, by the amount wagered.

### Multiple Wagers

For multiple wagers sold on one ticket, such as the \$12 box bet on a Big Triple or Trifecta, the wager is considered as six \$2 bets and not one \$12 bet for purposes of computing the amount to be reported or withheld. Winnings on a \$12 box bet must be reported if they are \$600 or more, and Federal income tax must be withheld if the proceeds total more than \$5,000 or, if the

proceeds do not exceed \$5,000, if the recipient fails to provide a TIN.

### Identical Wagers

Winnings from identical wagers (e.g., two \$2 bets on a particular horse to win the same race) are added together for purposes of the reporting and withholding requirements. Also, winnings from identical wagers that are not part of the payment for which the Form W-2G is being prepared are added together for purposes of withholding to determine if the total amount of proceeds from identical wagers is more than \$5,000.

#### Box 1

Enter payments of \$600 or more if the payment is at least 300 times the amount of the wager.

#### Box 2

Enter any Federal income tax withheld, whether 25% regular gambling withholding or 28% backup withholding.

#### Box 3

Enter the type of wager if other than a regular race bet, for example, Daily Double or Big Triple.

#### Box 4

Enter the date of the winning event. This is not the date the money was paid if it was paid after the date of the race (or game).

#### Box 5

Not applicable.

#### Box 6

Enter the race (or game) applicable to the winning ticket.

#### Box 7

Enter the amount of additional winnings from identical wagers.

#### Box 8 or 10

Enter the cashier and/or window number making the winning payment.

#### Boxes 11 and 12

Enter the identification numbers of the person receiving the winnings. Identification from a driver's license, social security card, or voter registration may be furnished by the person receiving the winnings.

#### Box 13 (optional)

Enter the abbreviated name of the state and your state identification number.

#### Box 14 (optional)

Enter the amount of state income tax withheld.

## 2. Sweepstakes, Wagering Pools, and Lotteries

File Form W-2G for each person to whom you pay \$600 or more in gambling winnings from a sweepstakes, wagering pool, or lottery (including a state-conducted lottery) if the winnings are at least 300 times the amount of the wager. The wager must be subtracted from the total winnings to determine whether withholding is required and, at the option of the payer, to determine whether reporting is required. The wager must be subtracted at the time of the first payment.

The requirements in this section apply to church raffles, charity drawings, etc. In the case of one wager for multiple raffle tickets, such as five for \$1, the wager is considered as \$.20 for each ticket.

### Withholding

You must withhold Federal income tax, at the rate of 25% (regular gambling withholding), from the amount of winnings less the amount wagered if the winnings less the wager exceed \$5,000. If the winner of reportable gambling winnings does not provide a TIN, you must backup withhold at the rate of 28% on any such winnings that are not subject to 25% regular gambling withholding. That is, backup withholding applies if the winnings are at least \$600 but not more than \$5,000 and are at least 300

times the wager. Figure the 28% backup withholding on the amount of the winnings reduced, at the option of the payer, by the amount wagered.

Installment payments of \$5,000 or less are subject to 25% regular gambling withholding if the total proceeds from the wager will exceed \$5,000.

If payments are to be made for the life of a person (or for the lives of more than one person), and it is actuarially determined that the total proceeds from the wager are expected to exceed \$5,000, such payments are subject to 25% regular gambling withholding. When a third party makes the payments, for example, an insurance company handling the winnings as an annuity, that third party must withhold.

### When Paid

A payment of winnings is considered made when it is paid, either actually or constructively, to the winner. Winnings are constructively paid when they are credited to, or set apart for, that person without any substantial limitation or restriction on the time, manner, or condition of payment. However, if not later than 60 days after the winner becomes entitled to the prize, the winner chooses the option of a lump sum or an annuity payable over at least 10 years, the payment of winnings is considered made when actually paid. If the winner chooses an annuity, file Form W-2G each year to report the annuity paid during that year.

### Box 1

Enter payments of \$600 or more if the payment is at least 300 times the amount of the wager.

### Box 2

Enter any Federal income tax withheld, whether 25% regular gambling withholding or 28% backup withholding.

### Box 3

Enter the type of wager (such as raffle or 50-50 drawing) or the name of the lottery (such as Instant, Big 50, Baker's Dozen, or Powerball) and the price of the wager (\$.50, \$1, etc.).

### Box 4

Enter the date of the winning transaction, such as the date of the drawing of the winning number. This might not be the date the winnings are paid.

### Box 5

For a state lottery, enter the ticket number or other identifying number.

### Boxes 6 Through 8 and 10

Not applicable.

### Boxes 11 and 12

For other than state lotteries, enter the identification numbers of the person receiving the winnings. Identification from a driver's license, social security card, or voter registration may be furnished by the person receiving the winnings.

### Box 13 (optional)

Enter the abbreviated name of the state and your state identification number.

### Box 14 (optional)

Enter the amount of state income tax withheld.

## 3. Bingo, Keno, and Slot Machines

File Form W-2G for every person to whom you pay \$1,200 or more in gambling winnings from bingo or slot machines, or \$1,500 or more from keno after the price of the wager for the winning keno game is deducted. If the winnings are not paid in cash, the FMV of the item won is considered the amount of the winnings. Total all winnings from each bingo or keno game. Winnings and losses from other wagering transactions are not to be taken into account in arriving at the \$1,200 or \$1,500 figure.

### Withholding

Regular gambling withholding (25%) **does not** apply to winnings from bingo, keno, or slot machines. However, if the recipient of reportable gambling winnings from bingo, keno, or slot machines does not provide a TIN, you must backup withhold at the rate of 28%. That is, if the winnings are at least \$1,200 from bingo or slot machines or \$1,500 from keno, 28% backup withholding applies to the amount of the winnings reduced, at the option of the payer, by the amount wagered.

### Box 1

Enter payments of \$1,200 or more from bingo or slot machines or payments of \$1,500 or more from keno.

### Box 2

Enter any 28% backup withholding.

### Box 3

Enter the type of wager (i.e., bingo, keno, or slot machines) and the amount of the wager.

### Box 4

Enter the date of the winning transaction.

### Box 5

Enter the ticket number, card number (and color, if applicable), machine serial number, or any other information that will help identify the winning transaction.

### Boxes 6 and 7

Not applicable.

### Box 8

Enter the initials of the person paying the winnings.

### Box 10

Enter the location of the person paying the winnings, if applicable.

### Boxes 11 and 12

Enter the identification numbers of the person receiving the winnings. Identification from a driver's license, social security card, or voter registration may be furnished by the person receiving the winnings.

### Box 13 (optional)

Enter the abbreviated name of the state and your state identification number.

### Box 14 (optional)

Enter the amount of state income tax withheld.

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## Specific Instructions for Form 5754

Use **Form 5754**, Statement by Person(s) Receiving Gambling Winnings, only to prepare Form W-2G when the person receiving gambling winnings subject to reporting or withholding is not the actual winner or is a member of a group of two or more winners on the same winning ticket. The payer is required to file Forms W-2G based on Form 5754.

The person receiving the winnings must furnish all the information required by Form 5754. However, a recipient of winnings from a state-conducted lottery need not provide identification other than his or her taxpayer identification number (TIN).

Part I lists the identification of the person to whom the winnings are paid, and Part II lists the actual winners, their respective shares of the winnings, and any additional winnings from identical wagers.

In Part II, the person receiving the winnings must provide the name, address, TIN, respective share of the winnings, and additional winnings from identical wagers for each of the winners. In addition, if regular gambling withholding is required, the form must be signed, under penalties of perjury, and dated by the person receiving the winnings.

The form must be returned to the payer for preparation of Form W-2G for each of the persons listed as winners. Forms W-2G may be issued immediately or by January 31 following the year of the payment.

**Do not send Form 5754 to the IRS.** Keep it for your records.

### Withholding and Forms W-2G for Multiple Winners

If more than one person shares in the winnings from a single wager, the total amount of the winnings (less the amount wagered) will determine the amount of the proceeds for purposes of reporting and withholding. Do not allocate winnings to each winner before determining whether the withholding or reporting thresholds were reached.

For example, E purchases a sweepstakes ticket for \$1 on behalf of himself and S, who contributes an equal amount of the ticket price and who will share equally in any winnings. The ticket wins \$5,002. Because the winnings ( $\$5,002 - \$1 = \$5,001$ ) are more than \$5,000, you must withhold 25% of \$5,001. You must prepare a separate Form W-2G for E and for S using the information furnished to you on Form 5754.

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